

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 606

LOUIS BUCHALTER, PETITIONER

VS.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF JAMES COUNTY, STATE OF NEW YORK

No. 610

EMANUEL WEISS, PETITIONER

VS.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

No. 619

LOUIS CAPONE, PETITIONER

VS.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF NEW YORK

PETITIONS FOR CERTIORARI FILED

DECEMBER 30, 1942.
JANUARY 2, 1943.
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CERTIORARI GRANTED MARCH 15, 1943.



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Brooklyn, N. Y., November 6, 1941.

TRIAL RESUMED.

MAX RUBIN, a witness in behalf of The People, resumed the stand and testified further as follows: -]

Cross examination by Mr. Barshay (continued):

Q. As business agent for Local 240, didn't you then have the power to distribute jobs to various drivers who belonged to your union? A. Yes, sir, after consulting the executive board, of course.

4748

Q. The executive board, you mean, of Local 240? A. That is right.

Q. Who was on the executive board at this time? A. Moe Levine, Sam Levine, Louis Plotkin, Davey Cantor, Isidor Cohen.

Q. They were all drivers, weren't they? A. Yes, sir, and there were a few others.

Q. Rarely, if ever, were you overruled by the executive board? A. I believe so.

4749

Q. That is true? A. Yes.

Q. It was also your job to know which employer—truckman employer. I am speaking of now—operated for a non-union house A. Not when I was with the Expressmens Union, no, sir.

Q. Wasn't that one of your jobs, to see that your men could have their employment? A. Yes, sir.

Q. Wasn't it to their advantage that they should work for a union house? A. No.

Q. Wasn't that the very purpose of the union?

4750

Mar Rubin—For People—Cross

A. No, sir, not Local 240. The purpose was to keep their men working. The question of organizing jobs or organizing manufacturers, that was a job for the Amalgamated, as I said yesterday, so I was a very minute part there.

Q. Mr. Rubin, wasn't it to the advantage of members of Local 240 to see to it that the manufacturers employed union truckmen

Mr. Turkus: I object.

4751

The Court: Objection overruled.

A. From the standpoint of unionism, do you mean

Q. For their own personal, private interest.

A. No, sir, it made no difference.

Q. Wasn't there a holding up of union men then A. It was simply I had no non-union in the industry—I had none—I don't remember one non-union truckman I had—that anybody drove a non-union truck that was a member of my local at that time.

4752

Q. Of course, that was the very point of the existence of that local, to have only union men in the union? A. No.

Q. And it was to their advantage to see to it that that situation continued? A. I don't know about that. That is an abstract question. Whether it was to their advantage or whether it was of interest to them to keep it that way, that is another question.

Q. Why were they paying you a salary if not to preserve their status? A. You asked me a question of unionism and non-unionism and non-enforcement; you did not ask me anything about maintaining the status of all the members of the

local I was business agent of. I say of course it was an advantage to them to be a member of that particular group and maintain their condition.

Q. And they put you there to see that that condition was carried out? A. Yes, sir.

Q. We understand each other now. Now, you said that truckmen were a fixture with every manufacturing house? A. As a general rule, yes, sir.

Q. And if a manufacturer became non-union, Local 240 men might lose their jobs with him?

A. No, sir, unless the work went out of town into the hands of non-union truckmen—go out of town—but in the city it had no effect.

Q. It had no effect? A. Yes, sir, out of town, but not in the city.

Q. They did a lot of work outside the city?

A. Three concerns; there may have been others, but three primarily.

Q. As a matter of fact, the stoppage occurred because so much of the work was going out of the city? A. That we had no control of, particularly the branch.

Q. And you were familiar with that situation before the stoppage? A. Of course.

Q. Now, you knew the Svirsky Clothing House very well, didn't you? A. Yes, sir.

Q. Did you extort from the Svirsky Clothing Company the sum of \$1,500 just before you severed your connection with the Joint Control Board—yes or no? A. Positively not.

Q. Just for the sake of repetition from yesterday, very briefly: The Amalgamated is made up of representatives of the various locals constituting the various branches of the garment trade,

4756

Max Rubin—For People—Cross

directing the interests of the helpers, drivers, etc.? A. That is right, at that time.

Q. I am speaking only of the time before the stoppage. A. Yes, sir.

Q. Incidentally, before this stoppage, did you participate in any other stoppage? A. Well, the strike in 1921 was a big one; there may have been some others.

4757

Q. In the 1921 strike, Mr. Rubin, you received your orders directly from the duly constituted officers of the Amalgamated? A. In 1921 I worked in the office, giving out relief to employees. I was getting \$35 a week. That is what I did then.

Q. Did you partake in stoppage? A. No, sir.

Q. Did you ever partake in stoppages other than in 1932? A. That was the only one, I think.

Q. Was that your first experience? A. I don't say that; there may have been a little strike here and there. That is the first one I played any real part in.

4758

Q. In the little strikes that you had previously experienced did you receive your orders directly from the officers of the Amalgamated, or else their subordinates? A. No, sir.

Q. You yourself did not call a stoppage? A. No, sir.

Q. Someone above you instructed you that there was a stoppage? A. No, sir, not me. I just went around to see how things went along; I had no power.

Q. I want to know if you had any part in the stoppage. A. I had absolutely no part in any stoppage except the 1932 stoppage; that I played an actual part in, actually.

Q. You led me to believe you did participate

in some small stoppages on other occasions. A. By going around, that is, I went around to a particular neighborhood where a strike took place. I was a part of it. I took some part in the stoppage of the International Tailoring Company you spoke about yesterday.

Q. Coming down to this stoppage, you had heard it was to happen to the general industry, didn't you? A. I did not know that, no, sir.

Q. You did not know the stoppage was to take place? A. No.

Q. You did not know that the business was so bad because of the truckmen of the manufacturers and contractors going out of town? A. I know we done business, if that is what you mean, but you speak about stoppage.

Q. You did not know the officers of the Amalgamated were contemplating something in order to correct that condition? A. Of course, no—Mr. Barshay, let me explain. I will help you.

Q. Just a second. I am trying to get from you, before the stoppage was called by the duly-constituted officers of the Amalgamated, is that a fact? A. I answered that I was an outlaw there. The Amalgamated group wanted no part of me. What would I know what the Amalgamated officers would do? They did not talk to me.

Q. I am now speaking of the time when you are not an officer connected with any group except Local 240 as business agent. Do you understand me now? A. You spoke of before the stoppage.

Q. Before the stoppage in the summer of 1932, you were business agent of Local 240? A. That is right.

4760

4761

4762

Max Rubin--For People--Cross

Q. You were part of the Amalgamated? A. In the Cutters Union, yes, sir.

Q. What is the only period I am speaking of, immediately before the stoppage did you get your instructions from your superior officers of the Amalgamated as to any stoppage that would take place? A. No, sir.

Q. Did you learn of it? A. Yes, sir.

Q. From whom did you learn of it? A. From Lepke.

4763

Q. Didn't you testify yesterday in this very court room at page 1416: "To my knowledge"—

"Q. Was the stoppage called by the duly-constituted officers of the union?"

And then after Mr. Turkus made an objection to the question did you say that to your knowledge—

"A. To my knowledge it was called by the actual officials of the organization."

A. Wouldn't that be the logical thing, for a union to call a stoppage—but when I heard about it, that is a different story.

4764

Q. Of course, you don't suppose they are going to get an outsider to call a stoppage for them? A. They will call it—of course they will—they go through all the legal formalities of calling a stoppage after they first find out whether the thing can be successful. Once they find out the thing can be successful, then they go ahead, but not until then.

Q. So that this stoppage was called by the duly-constituted officials of the Amalgamated, wasn't it?

Max Rubin—For People—Cross

4765

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. You also said that Mr. Buchalter at that time was not a member or official of that organization; is that correct? A. Officially? Of course not.

Q. As business agent of the Expressmens Local, which is an important factor in executing a stoppage successfully, would you not get your instructions directly from the Amalgamated officers? A. Not at that period; I was not part of that machine.

4766

Q. I am now speaking of the time when this stoppage was called in 1932. You were part of the machine then, weren't you, as business agent? A. No, sir, the Orlofsky union started in 1931, and I went with that group. Bruno Belea came into Local 240 and assumed sort of a dictatorial position there. I could not immediately go back to my own job. That was part of the arrangement.

4767

Q. You got into Local 240 in 1927? A. That is right.

Q. Anyway, all the way up to the time of the stoppage in 1932, at that time you were in full control, as business agent, of Local 240, weren't you? A. Except for two months.

Q. Excluding now the two months. A. I don't know when Belea was there. It was right after the agreement was made.

Q. When was the agreement made? You said yesterday Orlofsky's union was given up in April, 1932; you said the stoppage was called

4768

Max Rubin—For People—Cross

August 4th. A. It was between that period. I did not even go to the place.

Q. A day or two or three or four before all the stoppages in August of 1932, you were business agent of that union, weren't you? A. I was always business agent.

Q. And you were getting your money? A. I did not get paid. They paid me later on.

4769

Q. You mean you did not get paid because financially they could not afford to pay you then? Was that the reason? A. I don't know if that was the reason. No one paid any dues, it is true. The union was demoralized. Belea was there.

Q. Actually, you got your money at a subsequent time? A. Yes, sir.

Q. Was that immediately before August 4, 1932, you were business agent of Local 240? A. That is right.

4770

Q. In the normal course of events, when a stoppage was called by the Amalgamated through all its branches, all the way down, would you not receive, as business agent, your instructions with respect to carrying out your part in executing successfully this stoppage?

Mr. Turkus: Objected to as speculative.

The Court: Objection sustained.

Mr. Barshay: Exception.

The Court: You can ask what he did do, not what he would do.

Mr. Barshay: I want to first show the custom and then show what he did, that it was not a deviation, but that it was in

Max Rubin—For People—Cross

4771

the ordinary course of events that this man carried out his instructions.

The Witness: You cannot show that by me.

The Court: Counsel may try to show it.

Q. Is it not a fact, Mr. Rubin, that immediately before the stoppage was called in 1932, you received your instructions as to what part you would play in this stoppage from the duly-constituted officers of the Amalgamated? A. Absolutely not. I will tell you the reason why—

4772

Q. Please don't volunteer. Do you recall that when this stoppage took place hundreds of workmen connected with the Amalgamated lay down in the street on 5th Avenue in the garment center to prevent trucks from leaving the City of New York to go to Jersey and Pennsylvania? A. A few did.

Q. Your members participated in that demonstration, didn't they? A. They did.

Q. No trucks rolled? A. They did not.

Q. No trucks rolled outside of Branch Stores? A. No trucks rolled.

4773

Q. As a matter of fact, Mr. Rubin, the stoppage was successful and was completed about the 11th of August, 1932? A. I do not know the date.

Q. Well, about August 11, 1932?

Mr. Turkus: I object. He says he does not know the date.

Q. I asked him is it about August 11th. A. I have no idea; I think you told me yesterday from the 4th to the 12th.

4774

Max Rubin—For People—Cross

Q. What part did you play in this stoppage in those eight days? A. Nothing at all, just walked around the same as the others did. Did absolutely nothing else.

Q. You mean you took a walk in the street?

A. It was the Amalgamated's strike.

Q. You were part of the Amalgamated; your union was part of the Amalgamated? A. Yes, sir, but that is all we did.

4775

Q. Just walk around? A. The members and myself walked around. There was nothing else for us to do.

Q. Did you instruct your members not to roll?

A. I did. I told the express force also not to roll.

Q. In other words, briefly, you carried out all the duties necessary on your part to culminate this stoppage successfully? A. Yes, sir.

4776

Q. No matter what you had to do, whether to instruct them or to urge them, dictate or instruct them to lay down and not to work, walk around in group demonstrations, to take them off the trucks or similar duties, isn't that so?

Mr. Turkus: I object.

The Court: He can answer. Objection overruled.

A. All I instructed the men to do was to help on the picket line. We were only aiding. There were 25,000 or 26,000 other people out on the street, say about 5,000 were out on the street of the organization and you might add that maybe fifteen or twenty or thirty were there too.

Q. In order to successfully prosecute a strike

Max Rubin—For People—Cross

4777

you needed the cooperation of every branch of the industry, didn't you? A. Yes, sir.

Q. Were you giving yours? A. Yes, sir.

Q. Now, stoppage is lawful, and means the carrying out of a conflict, a temporary conflict between the union and manufacturers?

Mr. Turkus: I object.

The Court: He cannot answer a question of law. Objection sustained.

Q. They do it right now, don't they?

4778

Mr. Turkus: I object.

The Court: He testified on direct that stoppage was practically to see if the men were in a mood to strike and if a strike could be successfully undertaken.

Q. And this stoppage resulted in a strike and was successful, wasn't it? A. It was, all the elements inside and outside of the union cooperated.

Q. As a matter of fact, Mr. Rubin, right now you read in the daily papers with respect to these strikes and these stoppages?

4779

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. It is the customary way of trying to culminate successfully a dispute between a manufacturer and the union?

Mr. Turkus: I object.

4780

Max Rubin—For People—Cross

The Court: I think you missed the point. I did not understand the direct testimony on this point to be for the purpose of showing that an illegal act was being done, but simply that the purpose was part of a general scheme, as he said, according to Lepke, for a stoppage because business was going to Pennsylvania; and that there was protest by this witness against bringing in either the Garfield concern or the New York & New Jersey, but that, notwithstanding this protest, there was, in the summer of 1932, a conversation in which he told Lepke the New York & New Jersey and Rosen objected to the stoppage, and that Sobler and Bluestein also, and that Lepke said he wanted to see Rosen. This is all put in, as I understand it, as part of a chain of events and not to show the stoppage itself was illegal. There is no question of law presented.

4781

4782

Mr. Barshay: Can I have it understood for this record that the stoppage called then was lawful, in the regular course of Amalgamated work?

The Court: The Court recognizes the alleged exercise of stoppage rights as legal; the question here is what was the purpose of the stoppage, as one of a chain of events leading up to the alleged killing. Was it directed particularly at the one who became ultimately the victim of a killing? It does not legitimize that.

Mr. Barshay: I don't urge that at all.

Max Rubin—For People—Cross

4783

I urge it is entirely disconnected with the alleged killing.

The Court: That is a question for argument to the jury.

Mr. Barshay: I am trying to prove by this witness that stoppage is the ordinary means used between unions and manufacturers, that it was not unusual, and that it was not directed at Rosen or anyone in particular; it was directed at the industry.

The Court: You have a right to show that.

4784

Mr. Barshay: I am trying to do that from this witness.

Q. Wasn't that the very purpose of the stoppage?

Mr. Turkus: I object to the form of the question.

Mr. Barshay: I will withdraw the question.

Q. This stoppage was not directed expressly at any particular person, was it? A. It was expressly directed—

4785

Q. At any particular individual, was it? A. No, sir. Not at any individual, the industry—the Branch stores—it was particularly directed at that group and any other group at that time that wanted to regulate industry altogether, but particularly stop the Branch Stores from taking work out.

Q. Mr. Rosen was no part of the Branch Stores? A. No, sir.

4786

Max Rubin—For People—Cross

Q. The Branch Stores are a large outfit? A. Fairly large.

Q. The Garfield was substantially large? A. Yes, sir.

Q. By comparison, Rosen's little business in Pennsylvania, as you described it, was infinitesimal, wasn't it? A. On the whole it was not much.

4787

Q. I am speaking of Mr. Rosen's interest in the little business, the Pennsylvania business he had, in the collection of it; you do not seek, do you, to convey the impression that in any degree this stoppage was called by the Amalgamated and all the subsidiaries in order to get Rosen out of business? A. Oh, no.

Q. How long did you know Weiner? A. Sam Weiner?

Q. Yes. A. About 1928, '27, '29, something like that.

Q. Weiner was the one in the Perfection? A. When I knew him he was not with them.

4788

By the Court:

Q. He was the man who had the canvas place? A. Yes, sir.

Q. Where the books were produced and examined? A. Yes, sir.

By Mr. Barshay:

Q. You knew Weiner before you knew Buchalter? A. Yes, sir.

Q. You knew Weiner independently of Buchalter? A. Yes, sir. I knew Weiner independently of Buchalter, sure.

Q. You know Weiner had a "Perfection Coats"? A. I knew him to be the Perfection Coats.

Q. What was the address of Weiner in 1932? A. Around 20th Street, I don't know.

Q. Around 20th Street? A. Yes, sir.

By the Court:

Q. You told us before 20th Street off 5th Avenue; is that correct? A. Yes, sir; I believe it was on the north side of the street.

4790

By Mr. Barshay:

Q. You claim you had a meeting at Weiner's with the defendant Buchalter in 1932?

Mr. Turkus: I object to the form of the question, "you claim."

Q. You said that? A. To my best recollection it was in 1932.

Q. Was Buchalter then connected with the Perfection? A. I don't think the Perfection was any good since then.

4791

Q. Whatever the name, was Buchalter connected with Weiner in any business then? A. I don't think so.

Q. Did Buchalter have any interest in Mr. Weiner's concern then? A. I don't think so.

Q. Don't you know, as a matter of fact, Buchalter did not become connected with Weiner until 1934, two years after this meeting you described? A. You mean became a partner in the concern?

4792

Max Rubin--For People--Cross

Q. Yes. A. That is true, in 1934.

Q. Don't you know Buchalter did not visit Weiner until he became a partner with him in 1934? A. I don't know that, and neither do you.

Mr. Barshay: I move to strike out the voluntary remark. If he wants to put my credibility at issue, I will tell him what I know.

4793

The Court: Strike out the last part, and also your remarks about telling him what you know.

Q. How many times did you meet Buchalter in Weiner's in 1932? A. That happens to be a year that I had great difficulty—

Mr. Barshay: I move to strike out the answer as not responsive.

The Court: Let him finish his answer.

Mr. Barshay: It is absolutely unresponsive, from the very beginning.

4794

The Court: Let him finish his answer.

Mr. Barshay: Exception.

The Witness: (continuing)—in placing all the places where I had stopped in the clothing industry.

By the Court:

Q. That is nine years ago and you cannot place all the places? A. I know a good many places where I stopped in 1932; there was about five or six.

Q. You remember the places, you have a mental picture of them. Did you keep a record or sheet? A. No, sir.

Max Rubin—For People—Cross

4795

Mr. Barshay: I object to the Court's question.

The Court: Objection overruled.

Mr. Barshay: Exception.

By Mr. Barshay:

Q. You remember this particular meeting with Buchalter, don't you? A. Yes.

Q. You did not keep a diary of that meeting? A. No, sir.

Q. You kept no written record of this meeting, and it is nine years ago? A. No, sir.

4796

The Court: Do not quarrel.

Mr. Barshay: I object to the Court's comment, that I am quarreling with the witness.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Did you meet Buchalter in Weiner's place in 1932, the other meeting you just described?

A. I don't remember.

Q. You cannot remember another instance?

A. I cannot, no, sir.

4797

Q. Did you meet and go there before this meeting in 1932? A. I think one time we met when he borrowed \$6,000 from Sam Weiner. I think it was in that period. I am almost—I am not sure—I am not positive, because I am afraid to say I am positive, because I may not be, but he borrowed \$6,000 from Sam Weiner around that time.

Q. In Weiner's office? A. I don't remember the diagram, I say.

4798

Max Rubin—For People—Cross

Q. I am asking you about Weiner's office and no other place. A. I don't remember, but I know there was an incident like that that took place, around that particular time.

Q. I did not ask you about any other place; do you understand? A. I am doing the best I can.

Q. The best you can do is to please answer my questions in the same way you cooperated with Mr. Turkus. A. I am trying to.

4799

Q. I did not ask you about any other incident or any other place. I want to know, if you cannot remember, tell me; if you can, tell me. That is all I want from you. Do you know of any other time in 1932 before this alleged meeting?

Mr. Turkus: I object to that as repetitions.

The Court: Objection sustained.

Q. (continued) With Buchalter, at Weiner's place.

4800

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Or after that.

Mr. Turkus: Objected to.

The Court: Objection overruled.

A. I cannot remember of any other.

Q. Do you know the date of this meeting? A. No, sir, just before—



Max Rubin—For People—Cross

4801

The Court: Do you mean the book event in the office of Weiner?

Mr. Barshay: Yes.

The Court: He testified it was in the summer of 1932.

Mr. Barshay: I think I have the privilege of getting an answer from this man, what this man's recollection is, without being refreshed constantly as to what he testified to on direct examination. That is exactly the point of cross-examination.

4802

The Court: Do you impute to the Court an ulterior motive?

Mr. Barshay: I don't impute any such thing.

The Court: Then just come to order and do not be disagreeable.

Mr. Barshay: I am not disagreeable.

The Court: You act that way.

Mr. Barshay: I do not act that way. Then I have a duty to cross-examine him, but he is constantly being told what he testified to on direct examination, so there may as well not be a cross-examination.

4803

The Court: The Court will not permit you to address it in that tone of voice. The Court demands respect. The Court is trying to get that respect, and has never raised its voice. Your manner toward the Court is distinctly quarrelsome, extremely so.

Mr. Barshay: I take an exception to that.

The Court: Outside of the court-room you would not talk to a judge in such a

4804

Mar Rubin—For People—Cross

tone. Now please come to order, and do not forget your manners.

Mr. Barshay: I take an exception to that. I have control of my manners.

The Court: I wish you would exercise it.

Mr. Barshay: It is a matter of opinion, sir.

The Court: Decidedly. There is only one person in the court-room taking your side, and that is yourself, on that point.

4805

By Mr. Barshay:

Q. Did you go out immediately after you received notice about this stoppage, to all of the truckmen?

Mr. Turkus: I object. That is not the testimony. The testimony he gave as to what he did on stoppage was related on direct examination. This is taking in evidence something he never testified to.

4806

The Court: The word stressed here is "all" of the truckmen.

Mr. Barshay: I am going to a different subject now, your Honor.

The Court: Objection overruled.

(Pending question repeated by reporter.)

A. I believe I did.

Q. How long did it take you? A. Not so very long.

Q. All the same, you knew what was going on?

A. I told each one individually.

Max Rubin—For People—Cross

4807

Q. You had no difficulty? A. Just with those few.

Q. You mean they said they did not agree with this stoppage, is that what you mean? A. One absolutely refused.

Q. You had no fight? A. No, sir, I am not a fighting man.

Q. You did not threaten anybody? A. I am not a threatening man.

Q. I am asking you now, did you? A. Of course not.

Q. You did not intimidate anybody? A. No, sir.

4808

Q. There was no necessity for it? A. I never did, even if there was any necessity.

Q. Does your conscience bother you? A. Not at all.

Q. I am not accusing you at the present, am I? A. I don't know.

Q. Then you came to the Branch Storage, and there was some difficulty with them? A. Yes, sir.

Q. They refused it? A. Yes, sir.

Q. Did they continue to refuse, or did they finally give in?

4809

Mr. Turkus: I object, unless the time is fixed, otherwise it is confusing to the jury.

Mr. Barshay: What is confusing? You know we are speaking only of stoppage. It is not confusing, is it, Mr. Rubin?

The Witness: I spoke to Butinsky, and he said no trucks had rolled.

4810

Max Rubin—For People—Cross

Q. You and Meyer Butinsky and the defendant Buchalter never met at Weiner's, did you?
 A. I don't think so.

Q. Or any other place? A. He knew Meyer Butinsky very well. He is a partner of Meyer Butinsky.

Mr. Turkus: May the record show that when counsel said "he", he indicated Lepke?

4811

Mr. Barshay: Yes.

Q. He knew Meyer Butinsky very well? A. Of course he did.

Q. Mr. Turkus wants the record to show it, and I want to see that it does. Was he a partner of the Branch Storage, to your knowledge, at that time? A. Before the stoppage?

Q. At the stoppage, or before the stoppage.

Mr. Turkus: I object to the confusion. "He." I don't know whether it refers to Lepke or Butinsky.

4812

By the Court:

Q. Was this a partnership or a corporation?
 A. There was stock given out, yes, sir, and the stock was made out to Hymie Curley Holtz.

Q. It was not a partnership? A. It was a corporation, to my best knowledge.

By Mr. Barshay:

Q. At the time of the stoppage, to your knowledge was Buchalter a partner in the Branch

Max Rubin—For People—Cross

4813

Storage? A. He had Hymie Curley Holtz hold the stock, because I had it in my hands to sell for him.

Mr. Barshay: May we have instructions to this witness to answer the question yes or no?

The Court: He cannot answer that yes or no; he answered it already.

Mr. Barshay: I move to strike out the answer as absolute hearsay.

4814

The Court: He said he had the stock in his hands to sell, although it was in somebody else's name. Motion denied.

Mr. Barshay: Exception.

Q. Now, assuming, for the sake of your testimony here, that the defendant Buchalter was practically, as you say, a partner or a stockholder in this Branch Storage, he did not ask you to play favorite with the Branch Storage, did he?

Mr. Turkus: I object to the form of the question, "assuming for the sake of." It is confusing; it is improper. I object to it.

4815

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. He did not tell you to play favorites with the Branch Storage, did he—yes or no?

The Court: The Court has ruled on that. Do not repeat it.

Mr. Barshay: The Court has not ruled

4816

Max Rubin—For People—Cross

on that question because in the other question I put in something else.

The Court: The objectionable part of that is the word "favorite," because it may be interpreted by the witness in a different sense.

Q. He told you to stop the Branch Storage?

A. Yes, sir.

4817

Q. The same as he told you to stop every other truck? A. That is right.

Q. You say that the certificate you speak of, you held in your hand? A. Yes, sir, that is right.

Q. You are sure it was the Branch Storage?

A. Positively—no, it was the Holland Haulage, which later went in the Branch Storage.

Q. You straightened yourself out. Is it the Branch or the Holland? A. It was the Holland Haulage that went into the Branch. It was originally started as the Holland Haulage, and then it came into the Branch Storage. This was in nineteen hundred and—I don't know, 1929, '30, or '31. I don't know what year it was, about.

4818

Q. When did you see the stock? A. During the stoppage.

Q. That was 1932? A. Yes, sir, but the stock was made out—

Q. Now, Mr. Rubin—

Mr. Turkus: I object; he interrupted with a question before he finished the answer.

The Witness: I remember the Holland

Max Rubin—For People—Cross

4819

Haulage original stock was taken out, and then later on it became the Branch Storage.

Q. You never saw stock of the Branch Storage belonging to the defendant Buchalter, did you?

A. Was it the Holland Haulage then? I am sure it was the Holland Haulage or the Branch, but it was a long time ago. If you will refresh my memory by questioning me—

Q. It was the Holland, wasn't it? A. Yes, sir.

4820

Q. And not the Branch? A. I think so.

Q. You corrected yourself.

Mr. Turkus: I object. There is no question but one is the successor of the other.

By the Court:

Q. Was it the same business? A. Absolutely.

Mr. Barshay: I object. This witness is not competent to testify to that.

The Court: That is a question as to physical setup. Objection overruled.

4821

Mr. Barshay: Exception.

By Mr. Barshay:

Q. You know the Holland Haulage was already out of business at the time of the stoppage? A. They ordered it into the Branch Storage; they forced it in; they made some arrangement with the Branch Storage outfit and they became one.

Q. Is the Holland in business now?

4822

Max Rubin—For People—Cross

Mr. Turkus: Objected to an immaterial to the issue in this case; we are trying a murder case.

The Court: Objection overruled.

A. I know they became part of one outfit.

Q. So he asked you to stop the outfit with which he was connected? A. Yes, sir. That is peculiar.

Q. He did? A. Yes, sir.

4823

Q. You went to the New York & New Jersey, in accordance with your testimony? A. Yes, sir.

Q. At that time did you know the set-up of the New York & New Jersey, who was the president, who was the vice-president, who was the secretary, who had the trucks? A. No, sir, I did not know that. I knew there were three bosses there; that is all.

Q. Did you know that Rosen was the least financially interested in the New York & New Jersey at that time? A. I could gather that from his past—

4824

The Court: No, not what you detected or assumed. Do you know anything about it?

The Witness: No, sir, not actually, no, sir.

Q. Did you know he had only one customer in Pennsylvania, and that is all he had in the business? Did you know that? A. Only one he had there?

Q. There was one customer in Pennsylvania?

A. The only business he had there was the Pennsylvania business; whether it was one or more

Max Rubin—For People—Cross

4825

I could not tell you, and I don't know the one you mentioned; I only know Freddy Ferraro.

Q. Whatever the name was, it was only one?

A. That is all I knew; there may have been others.

Q. One customer did not furnish much money to Mr. Rosen, did it?

Mr. Turkus: Objected to; he was a partner in the whole concern. That was the business, according to the testimony, of the New York & New Jersey, and Pennsylvania.

4826

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Was Kelly there at that time? A. No, sir. I never heard of Kelly there.

Q. Was he part of the concern at that time? A. Kelly?

Q. Yes. A. I don't know.

Q. To your knowledge, do you know that Kelly ever was? A. I heard he was a partner there at one time, but I don't know at this particular time whether he was or not.

4827

Q. Sobler & Bluestein did not agree to stop? A. No, sir.

Q. You never brought them to the defendant Buchalter, did you? A. They were more pliable.

Mr. Barshay: May I ask that the witness be instructed to answer the question?

The Court: Yes.

A. No, I did not bring them down.

4828

Max Rubin—For People—Cross

Mr. Barshay: Again I must ask you not to volunteer.

Q. You did not bring them down—Sobler & Bluestein?

Mr. Turkus: I object to that as already answered: "They were more pliable."

The Court: The Court sustains the objection. That part was stricken out.

4829

Q. (Question read by the reporter.) A. No, sir.

Q. Get down to this meeting. You said nothing in that meeting which implied any threat or intimidation to Mr. Rosen, did you—you personally?

Mr. Turkus: Objected to as a conclusion.

The Court: Objection sustained.

4830

Q. You did not threaten Rosen personally in that meeting, did you? A. Of course not.

Q. You did not intimidate him in any respect? A. I did not.

Q. This was a discussion which involved the reason for Rosen not agreeing to stoppage, isn't that so?

Mr. Turkus: I object. The question is what was said in the place. Not conclusions.

The Court: Objection sustained.

Mr. Barshay: Exception.

Mar Rubin—For People—Cross

4831

Q. There was a discussion between the defendant, you say, and Rosen, as to why he should agree to the stoppage, and Rosen in return gave the reasons why he should not agree to the stoppage?

Mr. Turkus: I object to that as a conclusion. The jury is to draw conclusions as to what the language means that was said in the room under those circumstances.

4832

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Nobody hit Rosen then? A. No one hit Rosen, no, sir.

Q. As a matter of fact, as you said on your direct testimony at page 1153— "What did Rosen say at the meeting? Walked in—" You said, "I, Rubin, told me that I would have to close down the Pennsylvania business." A. What is the wording on that?

Q. "Q. He walked in and said that I, Rubin—" meaning he meant you, Rubin— Well, I will read it as it is. It is only what I am looking at. "He told me I would have to close down the Pennsylvania business and we had to close down the whole business in New York. The Pennsylvania business was the only thing I have in the concern. If I lose that I will lose everything in the concern." That was the nature of the discussion, wasn't it? A. That is right.

4833

Mr. Turkus: I object. That was only one element, one question and answer.

4834

Max Rubin—For People—Cross

There were discussions there that went on, that included Lepke and Gurrah.

Mr. Barshay: Please make your objection without a speech.

Mr. Turkus: That is an objection, to draw a conclusion from what transpired. The jury does that.

The Court: Objection overruled.

4835

Q. You did tell Rosen that he would have to quit the Pennsylvania business, didn't you? A. I said, "Don't hit your head," in that room.

Q. Before that time? A. Yes, sir, before that time I did. He told me he would not do it. He told me he could not do it.

Q. So in this room, then, the defendant, you say, told him again something? A. That is right.

Q. You were present? A. Yes, sir.

Q. He said no, he could not do it? A. He said he could not afford it; that was all he had. He did not say "No," he said he could not do it. He was pleading.

4836

Q. Then the defendant, you say, said to him, "Rosen, you are kidding, you have plenty of business, you are kidding," that is exactly what he said? A. That is about it, yes, sir.

Q. Then the defendant said, "You show me the books," and Rosen said, "I will show you," and he went to the telephone and called up his office, is that correct? A. That is right.

Q. Then a lady came in who was Sylvia Rosen, with a book? A. That is right.

Q. Did you look at the book? A. No, sir.

Q. Wasn't it part of your business to see that? A. No.

Max Rubin—For People—Cross

4837

Q. What route, or business, or customers, he was serving in Pennsylvania? A. Not with Lepke and Gurrah in the same room, no.

Mr. Barshay: I object to that as not responsive and move to strike it out.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. The lady came in with the book, is that correct? A. Yes, sir.

Q. She was invited to sit down? A. I don't remember that.

Q. Well, she sat down, didn't she? A. I hope so.

Q. Nobody asked her to leave the room during the ensuing discussion? A. No, sir.

Q. Nobody made any effort to keep from her what the subject of the discussion was?

4838

Mr. Turkus: I object to the form of the question.

The Court: Objection sustained as to form.

Mr. Barshay: Exception.

1839

Q. How long did she sit there? A. I cannot tell you that.

Q. Do you know whether it was five or ten minutes, or twenty minutes? A. I don't know; it was a short time, but I cannot tell you how long.

Q. Would it refresh your recollection that she testified here it was twenty minutes, would that refresh your recollection? A. It was a short

4840

Max Rubin—For People—Cross

time; sometimes twenty minutes is short and sometimes it is very, very long.

Q. Then Rosen was told, "You cannot go to this house"? A. That particular house was mentioned, Gurrah said, "You cannot go here," mentioning like Mr. Turkus said, a flicking of his hand across the books.

Q. That is done all the time in the union field?
A. Oh, no.

4841

Q. Aren't truckmen allocated to various manufacturers? A. They have those houses registered and it belongs to them, yes, sir.

Q. You yourself have transferred truckmen from one house to another? A. In one case.

Q. That is what they were doing in this instance? A. They were doing?

Q. Yes, they were telling Rosen he could not go to this manufacturer? A. They said, "You cannot go here, you cannot go here."

Q. He only had one customer, you told us?
A. I didn't know that. I said I only knew one; I did not know if he had any others.

4842

Q. Did Rosen, in your presence, tell them he had more than one? A. I did not hear that.

Q. Did Rosen tell him how many he had? A. No, sir, I did not hear that.

Q. Did Rosen name another? A. No, he did not.

Q. Did you join in the conversation and say to Rosen, substantially, "Don't hit your head up against a stone wall, if they tell you to stop, stop."? A. That would apply to all people who did not stop.

Q. Isn't that so—that cards would not be given to other truckmen? A. It had nothing to do with cards. I don't know the formation.

After the stoppage was over I did not know how things were going to end.

Q. You spent your life in union activities with the Amalgamated, Joint Board, Control Board, Finance Committee, Business Agent, didn't you, so you knew what was to be followed subsequent to stoppage? A. I can answer that. I don't think there was ever a time before that that O.K. cards were given out. I think that was an innovation.

Q. Have they been given out since then? A. Since that particular talk, I think that was the first time, if I can remember correctly, that was the first time these O.K. cards were ever given out.

4844

Q. They were given out in the regular offices of the Amalgamated? A. No, sir, I think the meetings were held at 22 East 17th Street, the office of the manufacturers and trucking.

Q. Books were kept as to whom you gave each card? A. I think they kept a record.

Q. That was the system inaugurated then and followed since? A. I think so.

Q. Mr. Rosen was not treated in any other way than all the other truckmen were treated at that time? A. From the Amalgamated?

4845

Q. Yes. A. Of course, not.

Q. You made the suggestion that you would try to get him some extra business? A. I did.

Q. And that pleased Rosen?

Mr. Turkus: Objected to as calling for a conclusion.

The Witness: I think Lepke promised first more.

4846

Max Rubin—For People—Cross

Q. Lepke made him that promise, you say?

A. He did.

Q. And you carried out that promise? A. I did.

Q. Perfectly proper, wasn't it? A. I don't know how proper it was; I carried it out.

Q. You did so? A. Yes, sir.

Q. On those visits, Mr. Rubin, you told this jury you did nothing illegitimate? A. That is correct, that is right.

4847

Q. I mean you used no illegal methods to get Mr. Rosen that customer? A. No, sir, I just went up to Sam Svirsky and told him he would do us a big favor—I told him who wanted the favor—he did it.

(At this point the witness was allowed to leave the stand.)

The Court: Recess for five minutes for the benefit of the witness. The court will remain organized.

(The witness returns to the stand.)

4848

Q. Did you know, Mr. Rubin, then, at the time of the stoppage that the Pennsylvania, or the territory in Pennsylvania, was declared to be on the union side or the non-union side, did you know that? A. When we went up to see Svirsky, before the stoppage, do you mean?

Q. No, during the conference about the stoppage? A. I was not in any of those things. I cannot answer that.

Q. As a matter of fact, you know now, don't you, that Svirsky still employs Sobler who was once with the New York and New Jersey, approximately to this very day? A. Yes. What

Max Rubin—For People—Cross

4849

has that got to do with the Pennsylvania question that you just asked prior?

Mr. Barshay: I ask that the witness be instructed to answer questions.

The Court: So instructed.

The Witness: Yes.

Q. And he still does work for them today, do you know that?

Mr. Turkus: I object.

4850

By the Court:

Q. Does he? A. He does, yes, sir—I mean, I have not been out since 1939, so I have reason to believe he still continues. He did in 1939.

By Mr. Barshay:

Q. Now, the allocation of territory was really the allocation of the houses included in certain towns in Pennsylvania where the union work was going on?

4851

Mr. Turkus: I object. The question is confusing. I don't understand what it means.

The Court: I think we know what it means.

By the Court:

Q. When Gurrah had the book and forbade certain accounts, did you see what the accounts were? A. No, sir.

4852

Max Rubin—For People—Cross

Q. Did he mention what the accounts were so you could tell whether they were in Pennsylvania or not? A. No, sir, and he did not, either.

By Mr. Barshay:

Q. Do you know where those accounts were located? A. The New York and New Jersey?

By the Court:

4853

Q. No, that were forbidden by Gurrah? A. No, a couple I know, he spoke, he said about Wilkes Barre region, I believe.

Q. No, do you know? A. No, I don't know. All I know is it was not in the territory of the Branch. It went to a different part of Pennsylvania than the Branch did.

By Mr. Barshay:

4854

Q. Summing it all up, wasn't it decided as a result of the successful conclusion of the stoppage, which towns and territory were to be catered to by union truckmen? A. Not to my knowledge.

Q. You never learned of that? A. No, sir.

Q. Wasn't that the very purpose of the stoppage? A. No, sir.

Q. What was the purpose of the stoppage? A. To prevent him from going out of town.

Q. You say, "Going out of town," you mean out of town to perform under non-union conditions? A. No, sir, it was union shop; they were taking the work away from New York.

Q. Union shops competing with union shops, no matter where they were? A. No, sir.

The Court: There is a question which has not been cleared up by anybody.

By the Court:

Q. When you speak about business going out of town, do you mean pieces of cloth, cut from patterns, were being sent out of town for sewing and finishing? A. In some cases piece goods went out of town, too.

4856

Q. You mean the cutting as well? A. Yes, sir, in some cases.

Q. You mean that the manufacturer instead of having work done in Manhattan was shipping these goods, the cut goods, to Pennsylvania, and getting the labor there? A. That is right.

Q. For completing, making and completing the garment? A. Yes, sir.

Q. And that some of the Pennsylvania shops were not union shops, and that union labor was obtained which made a bigger overhead in the production of the garment? A. Yes, sir, it was cheaper to produce the garments there, and that is the reason the manufacturers sent their work out.

4857

By Mr. Barshay:

Q. And that was really the reason for the business going out of town? A. Yes, sir.

Q. And that was opposed to the best interests of the Amalgamated? A. (No answer).

4858

Max Rubin—For People—Cross

By the Court:

Q. And these truckers could have prevented their taking the stuff out of town, which would strangle the transfer of unfinished garments for making or completion to non-union districts? A. That is right.

4859

Q. Is that correct? A. Yes, sir, that is right, but with the question of the Branch stores, if I may amplify it—they could get sales territory in Pennsylvania, for manufacturers to go there. That was an added danger to them and their concerns.

Q. What concern? A. The Branch stores.

Q. When you say, "Branch Stores," do you mean a specific organization having that name? A. Yes, sir.

By Mr. Barshay:

4860

Q. Do you know how many accounts the New York and New Jersey had in this Wilkes Barre region? A. I do not.

Q. Do you know whether it was one, two or three? A. I don't know, I told you before.

Q. Did you ever learn? A. No, sir.

Q. In the conference room, did you ever learn? A. I was never in a conference room.

Q. The conference room I am speaking of now was where Rosen was there with you and the defendant, as you claim.

Mr. Turkus: I object. That was no conference room at all. The jury will decide what went on in that room. You

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4861

refer to it as conference; I would call it something else.

Mr. Barshay: I take an exception.

The Court: Call it the room where the conference was held.

Mr. Barshay: I object to the remark used by Mr. Turkus.

By the Court:

Q. When you speak of Wilkes Barre, that is in the coal mining district? A. That is right.

4862

Q. Was the condition in the coal mining district at that time one of general unemployment where men and women get jobs at something other than the coal mines? A. I cannot answer that. I was not up there.

Q. Where labor was cheap? A. Yes, sir, labor was cheap in Pennsylvania.

By Mr. Barshay:

Q. The room where this conference took place, you were there, weren't you? A. I was.

4863

Q. And it was a conference room for the moment? A. That is right.

Q. Who asked the daughter to leave? A. Her father told her to go.

Q. The defendant did not? A. No, sir.

Q. She left? A. She did.

Q. And the discussion continued? A. That is right.

Q. Rosen urged his side of the story, didn't he? A. Urged his side of the story?

Q. Yes. A. Yes, sir.

Q. Then the defendants said, "Don't worry,

4864

Max Rubin—For People—Cross

we will do something for you. You have nothing to worry about. If you have any trouble, we will do something for you."? A. That is right.

Q. That is exactly what he said? A. Yes, sir.

Q. And then Rosen left? A. Yes, sir.

Q. Do you know how soon thereafter Rosen went to the Garfield as an employe? A. When they resumed work, I believe.

Q. When was that, August 12th, do you say?

4865

A. Yes, a few days later, I think so.

Q. So that at the most, Rosen, after this alleged conference, or after this convention, went to the Garfield within a week? A. About that time, I imagine.

Q. Do you know of your own knowledge whether or not Rosen while he was a member of the New York and the New Jersey was drawing \$100. a week? A. I cannot tell you that.

Q. Do you know whether he drew less? A. I imagined he would draw less, but I would not know definitely.

4866

Q. Do you know whether he ever netted in his connection with the New York and New Jersey anywhere in the sum of \$100. a week? A. I do not know of any.

Q. Now, you had a talk with the defendant before he went to Garfield to work, didn't you, before Rosen went to Garfield to work? A. Before we got him into the Garfield, yes, sir.

Q. In other words, the defendant was instrumental in persuading the Garfield to employ Rosen at \$100. a week? A. Positively.

Q. As a matter of fact, Cooper refused to do it? A. Yes, sir, that is right.

Q. And this was before the defendant, to your knowledge, was invited by Cooper to join the Garfield? A. He did not go to work, in my opinion, for Louis Cooper until after the stoppage.

Q. The stoppage was finished August 12th?

A. He could not have gone to work for Louis Cooper much after that.

Q. Had you gotten Louis Cooper to agree to the stoppage before he went to work for Cooper, within the week? A. After the stoppage was over.

4868

Q. But it was within a week? A. I think so.

Q. It took a little longer than that for the defendant to accept Mr. Cooper's invitation to join there? A. No, sir, no, just the same moment, the same day.

Q. You mean stock was issued and the agreement was drawn on the same day? A. I don't know anything about stocks. I am talking about a conversation Louis Cooper had with Lepke in a particular speakeasy.

Q. I am asking you if you know when the defendant Buchalter joined, at the invitation of Cooper? A. I don't know if there was any stock issued.

4869

Q. You know formal legal papers were drawn? A. No, sir.

Q. You know that lawyers attended to the drawing and closing? A. No, sir, I don't.

Q. You don't know that, either? A. No, sir.

Q. Rosen was put to work immediately within a week, at \$100. a week? A. That is right.

Q. Was it \$125., do you recall? A. I think he got that later.

4870

Max Rubin—For People—Cross

Q. So he was advanced to \$125 a week shortly, later?

Mr. Turkus: I object. That is confusing.

The Court: Sustained as leading. He said he got it later.

Q. How much later? A. Maybe \$115.

4871

By the Court:

Q. Do you know anything about it? A. I know he got an increase; Rosen himself told me.

Q. Did you see him get it? A. No, sir, Rosen himself told me.

By Mr. Barshay:

Q. So he continued to work for Louis Cooper at the Garfield? A. Yes, sir.

Q. Do you know exactly how long he worked? A. I said before about eight months; I may be wrong, but that is my opinion.

4872

Q. Could it have been two years? A. It may have been.

Q. Could it have been two and one-half years, do you know? A. I am not sure of the exact time.

Q. You had been seeing Rosen in the meantime? A. Oh, yes.

Q. He was grateful, wasn't he? A. Grateful?

Q. Yes, to you? A. No more than usual when you get something which is all right.

Q. He was getting \$115, or \$125, per week, he was a foreman in a large concern, he expressed

Max Rubin—For People—Cross

4873

his gratitude to you, didn't he? A. He did not thank me; he was glad; he thanked everybody, I imagine.

Q. In other words, Rosen was quite happy about the change?

Mr. Turkus: I object. There is no such testimony on this record.

The Court: It is too psychological. Objection sustained.

Q. He expressed joy, didn't he, verbally? A. When I told him that I did not have any more business with the man.

4874

Q. When you first told him he was going to work for the Garfield at \$100. a week, he expressed his pleasure? A. At that particular time.

Mr. Turkus: I object. It is confusing. When a man has no alternative—

Mr. Barshay. I object to Mr. Turkus making any argument.

The Court: You are going in the realm of psychology and philosophy.

4875

Mr. Turkus: I object to it as confusing.

Mr. Barshay: I took an objection to the speech.

The Court: It makes no difference whether he was grateful or not. Rosen's reactions are of no consequence.

Mr. Barshay: Exception.

Mr. Barshay: The District Attorney made a speech which was inflammatory and prejudicial, when I was trying to dis-

4876

Mar Rubin—For People—Cross

prove the theory advanced by him and just at a time when I was succeeding.

The Court: The Court did not hear the speech, so many people are talking at once.

Mr. Barshay: The jury heard it. It was intended for the jury and not for the Court.

4877

The Court: Then the jury will disregard it. These interruptions must stop after objection is made. The Court must rule without wrangle. We have had enough of that in the last few days. We must go along with the case in an orderly fashion.

Q. Now, you say you don't recall how long he worked, maybe eight months, maybe a year, maybe a year and a half? A. That is right.

Q. No complaint from Rosen in the meantime, Mr. Rubin? A. No, sir, none whatsoever.

4878

Q. Did Sobler and Bluestein, to your knowledge, still continue with the New York and New Jersey, or did they split? A. I think they split up. Sobler continued to run the business; Sobler took the New York business and Bluestein took the Jersey business.

Q. Sobler is still in business? A. He is.

Q. Then there came a time when you met Rosen and he told you that Copper had fired him? A. That is right.

Q. The defendant Buchalter had nothing to do with his discharge, did he? A. I don't believe so.

Q. You know he did not? A. I can safely say he had nothing to do with it.

Q. As a matter of fact, when you conveyed that fact to the defendant, he said he was going to see Cooper and try to have him reinstated?

A. That is right.

Q. And he went to Cooper? A. That is right.

Q. And he urged Cooper to reinstate Rosen?

A. That is right.

Q. And Cooper said he stole some racks, he hit the band that fed him? A. He stole some bampers.

Q. That was the only reason Cooper ascribed for discharging Rosen? A. That is right.

4880

Q. You did not agree with him? A. Positively not.

Q. Cooper persisted? A. That is right.

Q. And Buchalter did everything he could for Cooper to change his mind? A. Everything he could?

Q. Yes, in the conference?

Mr. Turkus: I object. He does not know.

Q. He urged him to reinstate the man; he said, "Take him back"? A. That is right.

4881

Q. He agreed with you that the stealing of a few bampers is no reason for discharging a man? A. That is correct.

Q. He said, "Cooper, take Rosen back"? A. Yes, sir.

Q. He said it more than once? A. A dozen times.

Q. And Cooper persisted? A. Yes, sir.

Q. So you ascribe the discharge of Rosen directly to Mr. Cooper, don't you?

4882

Max Rubin—For People—Cross

Mr. Turkus: I object to what he does.
The Court: He has already said so.

Q. Now, Cooper was the man who really ran the Garfield, wasn't he, the manager? A. He managed it, yes, sir.

Q. He was the active person in the business? A. Yes, sir.

4883

Q. The defendant Buchalter took no participation actively in the business? A. No, sir, except that everybody knew that he was a partner, of course.

Q. I said actively, he did not hire or fire, or do anything in the business? A. No, sir, not at all.

Q. Cooper said finally, "I will not take him back," and he did not? A. That is right.

Q. Finally, the defendant gave up his efforts to convince Cooper to reinstate Rosen? A. That is right.

Q. You agreed with that by saying, "It is good enough for you, it is good enough for me"? A. That is right.

4884

Q. So that at that time you felt that you did your bit for Rosen? A. That is right.

Q. You felt the defendant did his bit for Rosen? A. No, sir, I did not feel that way.

Q. You know what I am speaking about? At the time of these conferences when Cooper persisted in refusal to reinstate Rosen, the defendant Buchalter a dozen times urged upon Cooper to reinstate him? A. That is right.

Q. You heard it yourself? A. That is right.

Q. And you joined in that? A. Yes, sir.

Q. And you say, with respect to Cooper, the defendant did everything he could with Cooper to put him back? A. By word of mouth, yes, sir.

Q. You did not want Buchalter to hit Cooper and make him take Rosen back? A. He did not have to.

Q. It was then you said, I repeat, "If that is good enough for you, it is good enough for me"? A. That is right.

Q. You could put a man to work yourself, couldn't you? A. I could.

Q. Because of being a business agent? A. Anything in New York that happened I could do—in New York.

4886

Q. Did you personally try to get any employment for Rosen? A. I did.

Q. And you could not succeed? A. No, sir.

Q. To whom did you go? A. I spoke to dozens of bosses and they did not want him.

Q. They personally did not want him? A. No, sir.

Q. That had nothing to do with the defendant Buchalter? A. No, sir, not at all.

Q. So every person who rejected your request for employment of Rosen, to your personal knowledge, did so of their own volition? A. Positively.

4887

Q. Was it because of his reputation in the industry?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Q. Did they ascribe a reason to you for their failure to employ Mr. Rosen?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

4888

Max Rubin—For People—Cross

The Court: Objection sustained.

Mr. Barshay: Exception.

Mr. Barshay: Your Honor, it goes directly to the point. The claim here, as advanced by the District Attorney, is that the defendant is the one who forced Rosen out of business, when everything is undoubtedly to the contrary. I am proceeding along that line through this witness' own knowledge.

4889

The Court: I am just thinking— The Court made a ruling. Now it comes to mind that before Lepke and this witness went to Cooper, there is evidence in the direct that this witness told, as a reason for going there, to Lepke, that it was no time to have Rosen hollering on Fifth Avenue, and that Rosen should therefore be put back. In view of that testimony you may cross-examine on that point. The Court reverses its ruling.

4890

Q. At this conference between Cooper, you and the defendant, when you say the defendant—

Mr. Turkus: (Interrupting) I object, unless the defendant is named. We have three defendants here.

Mr. Barshay: Isn't it obvious, Mr. Turkus, that I am representing Louis Buchalter. If you want to call him Lepke, go ahead. I call him Buchalter—the only name I know him by.

The Court: The Court stands repri-

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4891

manded. The Court will call him Buchalter.

Mr. Barshay: I am addressing Mr. Rubin—let the record be clear that I looked at Mr. Rubin and not at the Court.

The Court: The Court will not address any defendant by "Mister", or "Your Honor", or anything like that. We will call people by their proper names.

Mr. Barshay: I will call the defendant, "Buchalter."

4892

Q. Do you say that you had this talk with Buchalter or Cooper? A. All I can recall— I think it was 1934—

Q. Do you recall the year? A. I think it was '34.

Q. Have you any recollection of the month? A. No, I am not even quite sure about the year, but I think so.

Q. Now, in the talk you had with these men, these truckmen to whom you went to seek employment for Rosen, can you please tell us what reasons they gave for not wanting to employ him? A. He was considered a chiseler in the trade, and that, if you want me to amplify it, he would go to a tailor shop and take \$25. from a tailor and promise to get him some work and not get him the work; and he would go to a manufacturer and take a suit of clothes and promise to pay the manufacturer, and then he did not send him the money—that he did not want to pay the man—just petty larceny stuff.

4893

Q. Who was that? A. Joe Rosen, he had that reputation.

4894

Max Rubin—For People—Cross

Q. That is why, Mr. Rubin, these men refused to give him employment? A. Trucking bosses, yes, sir.

Q. So he stayed out of work for a considerable period of time? A. I figure about sixteen months.

Q. Despite your efforts to get him employment? A. That is right.

Q. You made honest and sincere efforts to get him employment? A. Yes, sir.

4895

Q. And you got rebuffed at the hands of employers because of the reason you gave this Court and jury? A. Yes, sir.

Q. When Mr. Cooper persisted in his refusal to re-employ Rosen, I believe you had a visit from Mrs. Rosen? A. Mrs. Rosen?

Q. Yes. A. The only time he was discharged, yes, sir.

Q. She came to you and she wanted to know why her husband was discharged by Cooper? A. That is right.

Q. Did she ask you? A. She did.

4896

Q. Did you tell her? A. I did.

Q. Did she then ask you to go to Cooper? A. I said, I invited her— I said, "Come on over."

Q. Did you go? A. Yes, sir.

Q. What did Cooper say? A. He would not put him back.

Q. That is all he said? A. Well, that was the gist of the conversation.

Q. Give us everything you can recollect. A. He would not put him back; he was no good; did not want him, and so on.

Q. Try to give us the best you can everything that was said. A. That is about all.

Q. That is about all? A. That is about all. It may have been a little longer, but that was the gist.

Q. He never said to her, "It is not up to me, go and see Lepke"? A. I did not hear that.

Q. And you were present all the time? A. That is right.

Q. Were there any other unemployed truck drivers in the Local 240 about that time? A. I don't think so.

4898

Q. Did you place any to work? A. I cannot tell you now, but I don't—the problem of unemployment is never very great there.

Q. In other words, if people really wanted men, there was plenty of work for them? A. I don't say plenty of work, but I never took anybody in there to keep them hanging around. Unless there was a job for a man I brought in, I would bring nobody in.

Q. Finally, after a considerable period of unemployment, as you described, and the reasons therefor, did you meet Larry Cooper, who was not related to Louis Cooper at all? A. He has been in business a long time.

4899

Q. You know him? A. Yes, sir.

Q. Were you instrumental in getting Larry Cooper to employ Rosen? A. Yes, sir, I spoke to him about it.

Q. Do you know of your own knowledge whether the defendant Buchalter also spoke to Larry Cooper and asked him to take Rosen? A. I could not answer that, but as far as I know, he did not.

4900

Max Rubin—For People—Cross

Q. He may have, without your knowledge? A. Of course.

Q. And so Larry Cooper employed Rosen as a truckman, is that so? A. Yes, sir, after the switch.

Q. But you were able to accomplish that—and a man named Cranes did work for Larry Cooper had to be shifted to the Garfield? A. That is right.

Q. It could not be done otherwise? A. No, sir.

4901

Q. Larry Cooper would not fire a man to accommodate Rosen? A. He would not dare.

Q. But Louis Cooper did not want to do that? A. That is right.

Q. Then Buchalter was then a partner with Louis Cooper in the Garfield about that time? A. I don't know when, but he was a partner.

Q. Was the defendant a partner with Louis Cooper in the Garfield about that time? A. I don't know when, but he was a partner.

Q. As a matter of fact, he was a partner since 1937, wasn't he? A. He was a partner.

Q. In the Garfield? A. From 1932.

4902

Q. Until 1937? A. I don't know when he severed his connection.

Q. So again it was necessary to enlist the aid of the defendant Buchalter to persuade Louis Cooper to take Cranes? A. Yes, sir.

Q. The defendant Buchalter did persuade Louis Cooper to employ Cranes, so Rosen could get employment? A. Yes, sir.

Q. There was a little difficulty to persuade Cooper to carry out that transaction? A. Yes, sir.

Q. The defendant Buchalter who was a partner of Louis Cooper insisted and finally suc-

ceeded and Cranes was employed and still is employed, to your knowledge, with the Garfield?
A. I think he still is, yes, sir.

Q. Now, Rosen worked for Larry Cooper how long? A. A very short time, a few months, I believe.

Q. Larry Cooper did not fire him, to your knowledge? A. He did not.

Q. Rosen quit of his own volition? A. That is right.

Q. He claimed he was sick? A. I don't know the reason; I heard afterwards that he claimed he was sick.

4904

Q. Something the matter with his heart, do you know?

Mr. Turkus: Objected to as hearsay, what he heard about the man.

Mr. Barshay: I asked him did he know.

Mr. Turkus: I object; it is hearsay.

Q. At any rate, Mr. Rubin, it is definite that the disassociation between Larry Cooper and Rosen was absolutely voluntary on Rosen's part?

4905

Mr. Turkus: I object. The witness indicated he does not know how it happened.

The Court: I will allow it. Answer the question.

A. It was voluntary, wholly voluntary.

Q. After the disassociation of Rosen from Larry Cooper, did you see Rosen? A. Only the time I spoke of.

Q. In the candy store? A. Yes, sir.

4906

Max Rubin--For People--Cross

Q. In other words, he no longer came in to ask you for employment? A. He did not.

Q. He no longer bothered you about getting a job for him any place? A. He did not.

Q. The first you learned, he bought a candy store, he did not ask you, or ask your help to get money to buy the candy store? A. He did not.

Q. Do you know when he bought the candy store? A. I don't know, sir.

4907

Q. When did you learn he bought the candy store? A. A short time after I saw he was not on the job and I made inquiry, and some of the members he told me he had a candy store, told me he bought a candy store in Brownsville.

Q. Would you say that was some time in April of 1936? A. I imagine about that time.

Q. You said that Dewey was appointed in July of 1935?

Mr. Turkus: That was June.

Q. You agree with Mr. Turkus, then?

4908

Mr. Turkus: It doesn't make any difference whether he does or not.

Q. Isn't that so? A. Yes, sir, July.

Q. July of 1935, let us not quibble about the date, but it was in July, 1935? A. Yes, sir.

Q. Let us go back to 1934. You became connected with another union, a flour trucking union? A. You mean by visiting unions?

Q. You became connected? A. I did not become connected. I visited the union in 1932, at the end of the year.

Q. Was there another trucking union, Local 138? A. Yes, sir.

Q. That has to do with flour trucking? A. Yes, sir.

Q. Disassociated completely from the garment workers? A. Yes, sir.

Q. Ore had nothing to do with the other? A. That is right.

Q. Did you know a man named Mike Cashel? A. Yes, sir.

Q. What was his position? A. He was assistant representative of the teamsters' union of the American Federation of Labor.

4910

Q. Did you know him well? A. For a short time I was a member of that outfit.

Q. You mean the flour outfit? A. No, sir, when I became a member of the American Federation of Labor; I became a member in 1933.

Q. Was it through his influence that you obtained admission to Local 138? A. No, sir.

Q. Did you ever tell anyone that was the fact? A. No, sir.

Q. Did you finally receive compensation from 138? A. I did.

4911

Q. How much? A. \$25, a week.

Q. You did not inform Local 240 that you were getting \$25, a week from Local 138, did you? A. I did not.

Q. You did not inform Local 138 what your salary was with Local 240? A. I did, but that has nothing to do with it.

Q. In other words, you carried on two jobs at one time? A. No, no, it was not a job.

Q. A pretty big job? A. It was not a job, no, sir, it was not, it was an association.

Q. A very big association? A. Yes.

4912

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Q. From which you profited? A. I profited by it, yes, sir.

Q. Without telling your employer, your real employer? A. Without notifying Local 240 of the union?

Q. Yes. A. I never notified them.

Q. As a matter of fact, your membership began, as you claimed, with your association under 138? A. That is not even true.

4913

Mr. Turkus: I object. It has nothing to do with the Rosen killing.

The Witness: It is not even true.

Q. In Local 138, you actively participated, didn't you? A. No, sir, not in local affairs, not at all.

Q. Will you please answer this yes or no—Did you participate and share financially, to your profit, in extortion, while you were associated with Local 138? A. As agent of Lepke, yes, sir.

4914

Mr. Barshay: May I ask you to do something with this witness, your Honor, who despite all your admonitions and instructions is speaking forth from the witness stand answers which have nothing to do with the case and he does it purposely, repeatedly and deliberately.

Mr. Turkus: Your Honor, he knew the situation when he asked the question.

Mr. Barshay: We will find out about that. Of course I knew it or I would not ask.

The Court: The qualification "as agent for Lepke", although competent, and

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4915

although it may be brought out in any direct by the District Attorney, is not responsive. Therefore it is stricken out.

Mr. Barshay: Now, for the record, as in the Richardson case, which I call to your Honor's attention, I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: The motion is denied, a purely technical rule. The subject-matter is competent.

4916

You may ask again if he was a graft collector. He can answer, but he may not state whether for his own pocket or for another, in response to your question.

Mr. Barshay: Of course, the Court is entitled to put it to him and to ask him to answer yes or no. May I take an exception to your Honor's ruling.

The Court: The ruling is based—

Mr. Barshay: On the withdrawal of a juror. That is what I have reference to.

The Court: Denied.

Mr. Barshay: Exception.

4917

Q. Did you participate in a shake-down of the Gottfried Baking Company to the tune of \$15,000? A. I did.

Q. Did you participate in a shake-down of the Wagner Pies to the tune of \$1,600? A. I don't remember that; I did not participate in that at all.

Q. Is your answer no, you don't remember?
A. I don't know—I said I don't remember; I

4918

Max Rubin—For People—Cross

— happen to remember the Gottfried very well, but I don't remember Wagner Pies.

Q. Is there a name to refresh your recollection? A. Maybe you can look in the book.

Q. You testified in the flour case? A. Look at the books and get the question and answer. They are correct.

4919

Q. I want to give you a chance. A. Why should you? I don't remember; I am giving it the best I can. I said that Gottfried I remembered very well. I don't remember the Wagner Pies.

Q. Do you deny it? A. No, sir, I don't deny anything.

Q. You admit it? A. I don't know.

Q. You don't know whether you participated in the shakedown of the Wagner Pies? Answer my question. A. I am trying to do the best I can. When you ask me— Let me make a general statement—

4920

Mr. Barshay: I object. There is something your Honor can do that I cannot.

The Court: Put your next question.

By the Court:

Q. Did you participate in a lot of shake-downs? A. I did.

Q. Never mind whether for yourself or for whom. A. I did, at the end of '34 until '36.

Q. Two years? A. Yes.

Q. Did you do a lot of graft-collecting? A. From the end of 1934 I did until about the middle of 1935, until I went away in September or October, 1936, the middle of October, 1936, I

did all that, from about the middle of July, 1935, until about October, 1936.

By Mr. Barshay:

Q. Do you need to refresh your recollection?

A. You read it from the book; what is in there I said; I simply don't remember the Wagner Pic. It does not stand out as the Gottfried. I am not denying anything.

Q. Do you want to refresh your recollection by looking at your testimony? A. No, you read it. Put it on the record.

Q. I have read it. I ask you if you now admit participation. A. Read it to me and I will tell you.

Q. Won't you read it to yourself? A. If it is necessary, all right.

Mr. Turkus: Let me see what you are showing him.

Mr. Barshay: Sure.

Mr. Turkus: May the record note it is page 950—don't close the book on me.

Mr. Barshay: Wait a while. Don't pull that stuff. The Court has something to say about this.

The Court: The Court cannot permit books to be handed to witnesses to read, which would deny this trial. Ask your question and let the witness answer.

Mr. Barshay: I thought it shortened the trial.

Mr. Turkus: That was not the purpose.

The Court: The Court rules you cannot do it.

4924

Max Rubin—For People—Cross

Q. On page 950, were you asked this question: "What did Harold Silverman say at that time?"

A. He got \$1,500 from some lawyer, I believe. I don't remember the name—about the Wagner Pie, and that he was giving me one-half but under no condition should I give Wolfy any of it; that Wolfy threw him out of the office and wants nothing to do with him. He does not want Wolfy to get any of this."

Does that refresh your recollection? A. Yes, sir.

4925

Mr. Turkus: May the record show that folio 2850 was not read?

The Court: You have your re-direct when this is over.

Mr. Barshay: Will your Honor tell the District Attorney to desist from this kind of talk? He has re-direct, and he can read it.

The Court: Maybe he will, and maybe he will forget.

4926

Mr. Barshay: He will not forget; he has two assistants to remind him.

Q. Did you participate in a shake-down or extortion of Fink in 1936? A. I think Fink—Sam Schorr came to my house and gave me some money.

The Court: Did you or didn't you?

The Witness: I did not meet Fink.

By the Court:

Q. Did you shake down Fink? A. I got some

Max Rubin—For People—Cross

4927

money from somebody who told me he got it from Fink.

Q. Who did you get it from? A. I don't know what particular man he got it from; I got it from Sam Schorr.

Q. You got your split? A. Yes, sir.

By Mr. Barsbay:

Q. Did you participate in a shake down or extortion of Micky Shalit? A. Yes, sir.

1928

Q. Is it not a fact that between 1935 and 1936 you participated in total shakes of \$400 to \$700 per week? A. It may have been more some weeks and it may have been less.

Q. But that was—some of it, rather, was after the appointment of Thomas E. Dewey as Special Prosecutor in July of 1935? A. That is right.

(A recess was then taken until 1:30 P. M., the jury admonished as to their demeanor in the interim.)

4929

(The witness is first allowed to leave the room, the jury next; defendants are remanded.)

4930

Max Rubin—For People—Cross

AFTERNOON SESSION—TRIAL RESUMED.

MAX RUBIN, resumed the stand and testified further as follows:

Cross-examination by Mr. Barshay (continued):

4931

Q. Before we adjourned, Mr. Rubin, the last question I asked you was, "Q. Some of it was after the appointment of Thomas E. Dewey as special prosecutor in July of 1935? A. That is right." Is that correct? A. That is correct.

Q. Did you hear, after the appointment of Mr. Dewey, Mr. Dewey's speech on the radio, appealing to the public for cooperation and offering protection of all witnesses who would give information against people whom he was investigating? A. No, I did not.

Q. Did you read it in the newspaper? A. I may have. I don't remember.

Q. Did you hear about it in any way then? A. I may have.

4932

Q. Did you know that Mr. Dewey was then offering police protection to all those who wished to testify, putting people under guard for 24 hours at a time? Did you know that? A. I may have.

Q. As Mr. Dewey proceeded to work along in his special investigation, did that subject ever come to your attention? A. As I worked with the Dewey office, is that your question?

Q. No, as Mr. Dewey himself was proceeding with his investigation— A. No.

Q. Did you learn that he was offering witnesses protection? A. No.

Q. I take it you had absolute faith in the

integrity of Mr. Dewey? A. I absolutely did, after I knew the man.

Q. You had faith in him before you knew the man? A. I did not know him so I could not have faith in somebody I did not know.

Q. By his reputation— A. I can't have faith in anybody I don't know. After I know a person, I can have faith in him. After I knew him I had a lot of faith in him.

Q. You committed no extortions in the Borough of Brooklyn, did you? A. No, sir.

4934

Q. The extortions which you admitted participating in were all in the Borough of Manhattan, were they not? A. I don't know where the money came from. I, myself?

Q. Yes. A. I was only in the office of 138.

Q. All your activities, whether large or small, were in the Borough of Manhattan? A. Whatever money was collected in 138, I got in Manhattan, yes, sir.

Q. You are not under indictment in Manhattan, to your knowledge, for any of the crimes you admitted participating in, are you? A. I am not. No.

1935

Q. You never have been? A. Never have been though I signed two waivers of immunity.

Q. I understand that. But you never have been indicted. That is what I want to know. A. I have not.

Q. And when you signed the two waivers of immunity, was it with respect to the flour extortion case? A. Yes.

Q. And that is the case in which you gave testimony against the defendant Buchalter? A. That is right.

4936

Max Rubin--For People--Cross

Q. Were you on the Garfield payroll at any time? A. No, sir.

Q. At no time? A. No, sir.

Q. Were you ever on the payroll of Brown & Pollock? A. No, sir.

Q. Isn't it a fact that you collected money at the restaurant of Shimmy Weinberger? You know Shimmy Weinberger, don't you? A. He is an ex-cutter.

4937 Q. Did you ever collect money through him from the firm of Brown & Pollock? Yes or no. A. No, sir.

Q. Now there came a time that you referred to as September 11, 1936. You said in your direct testimony that you met the defendant Buchalter on that day, Friday, September 11, and that day you remember quite vividly. Do you recall that on direct testimony? A. Yes, sir.

Q. Will you tell us the place you met him? A. 200 Fifth Avenue, Raleigh Clothing.

4938 Q. Will you tell us the time you met him? A. Some time about one o'clock, I imagine, in the afternoon.

Q. Give us as best you can the time you met him? A. Well, I would say in the early afternoon. I can't tell you exactly.

Q. Was it one o'clock? A. He usually came around, I believe, around one o'clock.

Q. You remember that day vividly. Can you tell us whether it was one o'clock or two o'clock or three o'clock? A. It was the early part of the afternoon.

Q. What is your best guess, your best recol-

lection with respect to the time, best recollection?

Mr. Turkus: Objectionable, best guess.

Mr. Barshay: I said best recollection and I leave "guess" out.

The Court: Have you any recollection, best or not best?

The Witness: The early afternoon, sir.

Q. Can you tell us who was in the room? A. When I spoke to Lepke?

4940

Q. Yes. A. I don't know if there was anybody there in that particular place.

Q. Have you any recollection on the point? A. I think there was a bookkeeper on the other side but I don't know.

Q. Do you know whether she was within hearing distance, on the question of space? A. I can't tell you that. I don't know if she was paying attention or not.

Q. You did not ask her to get out of the room? A. I did not. Of course not.

Q. The defendant to your knowledge did not ask her to get out of the room? A. No, he did not.

4941

Q. Do you know her name? A. No, I don't.

The Court: Do you remember whether she was there or not?

The Witness: I don't remember but there was always a girl—

The Court: We don't want any conjecture; we only want recollection.

The Witness: I don't remember, your Honor.

4942

Max Rubin—For People—Cross

Q. Do you know how long your talk took? A. Not very long.

Q. Would you say a half hour? A. I don't think so.

Q. Would you say less? A. I imagine so.

Q. Did anybody come in while you were talking to him? A. I think Allie Tannenbaum came in.

4943

The Court: Not what you think; do you remember?

The Witness: I think Allie Tannenbaum came in.

Q. During the conversation? A. Yes.

Q. Did he participate in the conversation? A. No.

Q. Was he within hearing distance of you and Buchalter?

Mr. Turkus: Objectionable. He cannot tell what someone else can hear.

4944

The Court: He can say how close he was, if he remembers or if he noticed.

Q. How close was he? A. I don't know. I didn't notice.

Q. Was he as close as I am now to Mr. Turkus, about two feet? A. I can't tell you that. I don't remember.

Q. You don't remember that? A. No.

Q. Were there any telephone calls while you and he were speaking that came into the office? A. I can't tell you that.

Q. Were there any telephone calls made by

Max Rubin—For People—Cross

4945

Buchalter or by you or by anyone there while you were in the office? A. I can't tell you that.

Q. Did you say at that conference that you were going to see Murray Weinstein? A. After Lepke got through talking, yes.

Q. Did you make an appointment with Murray Weinstein? A. No.

Q. Did you telephone him that you were coming? A. No.

Q. Did you know that he was in his place of business? A. On a Friday he is usually there earlier than usual.

4946

Q. Did you know that day? A. No, I took a chance and went over.

Q. What entrance did you go into the 200 Fifth Avenue when you came up that day to Buchalter's office? A. I can't tell you that.

Q. Do you know of your own knowledge which entrance Tannenbaum used, if you know? A. I don't know.

Q. Did you leave alone? A. I did.

Q. Do you know whether or not Tannenbaum remained after you left? A. He did.

Q. Or before you left? A. He remained.

4947

Q. How did you go to Weinstein's office? A. Down Broadway.

Q. Did you walk? A. I did.

Q. How long did it take you? A. From 23rd Street to 15th Street.

Q. How long did it take you? A. Five minutes.

Q. Did you meet any people on the way? A. I may have. I don't remember.

Q. Did you stop to talk to them? A. I don't think so.

Q. Do you recall the names of any people you met? A. No, I don't.

4948

Max Rubin—For People—Cross

Q. What time did you get to Weinstein's office?

A. I don't know. It was right after I left Lepke.

Q. Was he there—Weinstein? A. He was.

Q. Did you see anyone else there? A. The place was full of cutters or a few cutters.

Q. Did you wait your turn to see Weinstein? A. No, I went right in; knocked on his door and went right in.

Q. Was anyone present when you talked to him?

A. No.

4949

Q. How long did you talk to him? A. About a half hour or so.

Q. And during that time did you call from his office? A. No.

Q. Do you know whether Weinstein called from his office while you were there? A. I can't tell you that.

Q. Did you tell Weinstein that Rosen would work at anything at all, anything? A. I did not tell him that.

Q. Did you tell that to Buchalter? A. Not at that Friday, no.

4950

Q. You asked Weinstein to give him a position, did you not, to make room for Rosen some place?

A. I said to help me as far as Rosen was concerned.

Q. And Weinstein was the head of the union that employed how many people? A. Two thousand.

Q. And you now say that Weinstein rejected any help for Rosen?

Mr. Turkus: Object to the form. The word "now" carries an implication not warranted by the testimony.

Mr. Barshay: I withdraw the question.

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4951

The Court: Yes, he said that on his direct.

Q. You say now that Weinstein showed no interest in Rosen?

Mr. Turkus: Objectionable. The word "now" is objectionable.

Mr. Barshay: I will leave out the word "now".

The Court: Go ahead.

4952

Mr. Turkus: Your question has to be reframed.

Q. Do you say that Weinstein showed no interest in Rosen? A. I would not say he did not show any interest. He simply did not want to do what I requested him to do.

Q. Where did you ask Weinstein to place Rosen? A. I did not ask him to place him at all. I asked him to help me. I wanted to save his life. I asked him to help me. That is what I told him.

4953

Mr. Barshay: I move to strike out the answer of this witness which is entirely voluntary and not in response to any question put by me to him.

The Court: Strike it out.

Mr. Turkus: May that part where he said "I did not ask him to place him at all" remain?

The Court: Strike out the rest. The jury disregard it.

4954

Max Rubin—For People—Cross

Q. Did you ask for any particular work for Rosen of Weinstein? A. No.

Q. Do you know of your own knowledge whether Weinstein knew Rosen? A. He did.

Q. Was Weinstein then in a position to obtain employment for Rosen as a truckman?

Mr. Turkus: That is objected to. That is—

4955

Q. To your knowledge?

Mr. Turkus: That is incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Barshay: Exception.

Q. You told Weinstein that Buchalter sent you, did you not? A. I did not.

Q. You did not convey that message to him at all? A. No.

Q. This was a personal request on your part of Weinstein? A. That is right.

4956

Q. What time did you get back to Buchalter that day? A. If I was a half hour in Murray Weinstein's office, then it must have taken me another fifteen minutes or so to get back.

Q. Can you give me as best you can— A. I said it was early afternoon.

Q. —what time you got back Buchalter? A. I don't know the time.

Q. Was it three o'clock? A. I can't tell you that.

Q. It was after lunch? A. Yes, sure.

Q. Was it an hour after lunch? A. I said around one o'clock, a little after that.

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4957

Q. One o'clock you started with Buchalter? A. It would be another three-quarters of an hour.

Q. By the time you got back would you say it was a little after two, three?

Mr. Turkus: I object. The witness' recollection has been exhausted on point of time.

The Court: Sustained.

Mr. Barshay: Exception.

Q. In the conversation with Weinstein then, September 11, he told you about a baseball game, is that so? A. That is right.

Q. Had he ever told you about a baseball game before? A. He never did.

Q. Did you know there was to be a baseball game? A. I did not.

Q. Did you ever got away for week-ends yourself before? A. Oh, yes, conventions and things of that sort.

Q. Yes. A. Yes.

Q. You did not need Buchalter's permission to go, did you? A. To go away?

Q. Yes. A. No, sir.

Q. You could go wherever you wanted to? A. No, not all the time.

Q. On week-ends the time was your own? A. You mean this particular period that you are speaking of now?

Q. Yes. A. Yes.

Q. And so the subject of Rosen between you and Weinstein was dropped and the talk continued about a baseball game, an invitation to you to attend it in Vineland, New Jersey? A. That is right.

4958

4959

4960

Max Rubin—For People—Cross

Q. You had never attended a baseball game before with respect to the union playing on one side or the other? A. That is right.

The Court: Where is that, near Cape May?

The Witness: It is near Atlantic City, your Honor, about an hour's ride from Atlantic City.

4961

Q. Was there a convention in Atlantic City that week-end? A. No; he simply told me to meet him at the Breakers Hotel, to go to the game and meet him at the Breakers Hotel.

Q. Did he say he was going to the game? A. Yes.

Q. When you came back to see Buchalter, what entrance did you take? A. I don't remember. There were three ways of getting in.

Q. Which way did you choose? A. I don't remember.

Q. Did you have to use the tunnel? A. At times I used it.

4962

Q. I mean then, that day? A. I don't remember that.

Q. When you came back, did you see Tannenbaum? A. I did not.

Q. You did not? A. No, sir.

Q. Did you see any detectives around the building? A. I don't know if I saw them that particular day. I know they were around.

Q. I am speaking only of that day, Mr. Rubin—A. I don't remember seeing them.

Q. And no other day. Didn't you know, Rubin, that Buchalter was under the constant supervision of the Police Department, under the constant

Max Rubin—For People—Cross

4963

surveillance of the Police Department, then 24 hours each and every day? A. I didn't know that and I know it can't be true because many times I met him and there was no surveillance of any kind.

Q. You did not expect that the police would show their faces to you, did you?

Mr. Turkus: Now—

The Court: Don't argue. Sustained.

4964

Q. Didn't you know that from the latter part of September or rather from the early part of September, 1935, until the defendant was tried in the Federal Court in October of 1936, the defendant Buchalter was under the constant surveillance 24 hours a day of the Police Department of the City of New York and Tom Dewey's office?

Mr. Turkus: I object to it. It is already answered by the witness.

The Court: Sustained as repetitious.

Mr. Barshay: Exception, sir.

4965

Q. Did you know that the surveillance continued while he was being tried in the Federal Court?

Mr. Turkus: I object to that.

Q. In 1936.

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

4966

Max Rubin—For People—Cross

Q. Did you know that it continued until about March of 1937?

Mr. Turkus: Same objection.

The Court: All I can see to this persistence in the face of the Court's ruling is that it may be an attempt to impress on the jury something that is not in the evidence.

4967

Mr. Barshay: I take an exception to the Court's remarks.

The Court: Don't do it again. Abide by the ruling.

Mr. Barshay: I am asking the question, your Honor, and if your Honor sustains it I will abide by it but I am laying my foundation for something which I have in mind and which your Honor could know at the bench in one single second.

4968

The Court: Please don't violate the Court's ruling again. You have done it several times and each time gets into the mind of the jury something suggested by a question but not substantiated by an answer.

Mr. Barshay: It will be in the form of proof, sir.

The Court: Go ahead to something else.

Mr. Barshay: I ask the Court whether or not the District Attorney has in his possession in this court-room the records of the Police Department of the City of New York with respect to the surveillance of the defendant Buchalter during the periods I put to this witness.

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4969

The Court: Proceed with the cross-examination.

Mr. Barshay: Exception.

The Court: (To witness) The Court asked you where Vineland was because the Court wants to get an idea why you went to the Breakers. Is Vineland below Atlantic City?

The Witness: It is off to the left. I don't remember the road now but there is a certain place—

4970

The Court: After you get to Atlantic City?

The Witness: No, sir; you have to make a turn, if I remember correctly, to the right in order to get to Vineland. It is about an hour's ride from Atlantic City.

The Court: The Causeway ride alone is half an hour or more?

The Witness: I would not know that.

The Court: But at any rate are we to understand that you were told to go to the Breakers? That was the meeting place of those who were going to the baseball game in this place outside of Atlantic City?

4971

The Witness: That is right.

Q. Can you tell me what time you left the defendant Buchalter at the Raleigh on September 11th, the second time?

Mr. Turkus: That is objected to. That has already been gone over. The witness' recollection has been exhausted.

The Court: Sustained.

Mr. Barshay. Exception.

4972

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The Court: You mean the time he was told to go and get Berger?

Mr. Barshay: I am leading to that, Judge.

The Court: All right. That is what I thought you meant.

Mr. Barshay: I am leading to that now.

Q. Do you recall then? A. Right after I reported to—

4973

Q. I asked you for the time, that's all. A. I can't tell you the time.

The Court: Did you time any of these events?

The Witness: I did not.

Q. You said you remembered this vividly? A. I didn't remember any time. I know the—

Q. Was it after three?

The Court: Were you looking at your watch at any time?

4974

The Witness: No, sir.

Mr. Barshay: I object to the Court's question.

The Court: Overruled.

Mr. Barshay: This is a very vital point in my examination.

The Court: Overruled.

Mr. Barshay: Exception, sir.

Q. How long did you stay with Buchalter before you went to get Berger? A. In and out.

Q. You told him about the baseball game? A. Yes, but I mean after I explained to him what

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4975

happened. I went in, explained to him what happened, and went out.

Q. It took how long? A. A few minutes. I don't know the time.

Q. Anybody else there at that time? A. I don't remember.

Q. Buchalter did not send you to the game, did he? A. No, I told him I was going there. He said, "Go ahead."

Q. You were the one suggested it? A. I told him that Murray Weinstein had suggested it.

4976

Q. And you accepted the invitation? A. Yes.

Q. I mean Buchalter did not bring up the subject? A. No.

Q. He did not tell you to get out of town? A. No, I told him I was going. He said O.K.

Q. You volunteered that yourself? A. That is right.

Q. Where did you go to get Berger? A. I think I met him at the Expressmen's Association on 17th Street. I think so.

Q. Did you phone that you were coming? A. No.

4977

Q. Did you walk over there? A. I did.

Q. What time? A. I don't know. That is right after I left Buchalter.

Q. How long did that take you? A. From 23rd to 17th Street, five minutes, ten minutes.

Q. Walked again? A. Yes.

Q. Did you meet anyone on that occasion? A. I don't remember.

Q. Was Berger in the quarters where you say you went? A. I believe he was there when I got there, in fact I am sure he was there.

Q. Did you speak to Berger? A. I did.

4978

Max Rubin—For People—Cross

Q. How long did that take? A. Just to tell him that Lepke wants to see him.

Q. Was anyone else there? A. The room was full of people.

Q. Anyone within earshot of you, do you know? A. No.

Q. Can you name some of the people that were there? A. No.

4979

Q. Can you name one of the people? A. Friday was usually the day when people came in in the afternoon. They played cards there, pinochle and so on, so there was a few people there.

Q. So you cannot give us the name of one person? A. No.

Q. You knew everyone in that room? A. I did.

Q. Did Paul Berger leave right away? A. He did.

Q. Can you tell us that time? A. No, I can't.

Q. Not even approximate? A. No.

Q. Would you say it was about two hours after the first conversation you had with Buchalter? A. I would approximate it that way.

4980

Q. So the next day you went to Atlantic City?

A. I took my wife and child in my car and we drove to Atlantic City.

Q. The reason you took your wife and child was because she was ill? A. No, I took her.

Q. Maybe I misunderstood you. A. She got ill on the way. She did not feel so well as we neared the place, so instead of driving to Vineland I drove to Atlantic City.

Q. Then I misunderstood you when you said to Mr. Turkus at that time your wife's health was not good. A. Oh, no.

Q. It was just on the way? A. On the way.

Q. You started out for the game? A. That is right.

Q. Did you get to the game? A. No.

Q. When did you decide not to go to the game?

A. On the way up to Atlantic City or through that section.

Q. At what point? A. I can't tell you that.

Q. You had a son then, I take it. Was your son with you? A. Yes, he was with us. He is thirteen now and he was about nine or eight then.

Q. Did you tell him that you were going to the baseball game? A. My boy?

Q. Yes. A. Maybe, but I don't remember. A very little fellow, you know.

Q. Was there a convention at The Breakers at that time? A. There was not.

Q. Were there any union people stopping at The Breakers? A. I don't believe so. I didn't see anybody outside of those that went to the baseball game.

The Court: Were there many of those?

The Witness: About a hundred, sir, left from the Cutters Union on 15th Street, and we all drove out together, but in driving out on the road we lost one another.

Q. Generally, you were a retiring gentleman personally, were you not? You were not a good mixer?

Mr. Turkus: I object to it. That is incompetent, irrelevant, immaterial.

The Court: Sustained.

Mr. Barshay: Exception.

4984

Max Rubin—For People—Cross

Q. At the Breakers Hotel you mixed with everyone, did you not? A. No, I didn't.

Q. You registered under your name? A. I did.

Q. You saw Murray Weinstein there? A. I did.

Q. Talked to him about your not going to the game? A. No, I did not see him until after the game.

Q. Did you tell him you were not at the game?

A. I imagine so.

Q. Did you tell him why? A. No, I didn't.

4985

Q. Did you ask him again to do something for Rosen? A. I didn't.

Q. Did you tell him anything about Buchalter sending you to get Berger.

Q. Did not mention a word about it? A. No, sir.

Q. Did you mention to Weinstein one word about the conversation you and Buchalter had after you reported to Buchalter that Weinstein could not do anything for you? A. No, sir.

Q. Not one word? A. Not one word.

4986

Q. So that you did not tell anything at all with respect to what happened between you and Buchalter? A. To no one.

Q. The next day you left, back for New York? A. Sunday.

Q. The next morning, that is, Monday morning, you read the New York Times, and you learned of the death of Rosen? A. That is right.

Q. The first thing you did was to go to see Buchalter? A. That is right.

Q. Let us go back to the time you visited Rubin at the store. A. Rosen?

Q. I beg your pardon, Mr. Rubin—Rosen at the store, when Feinberg was there, which was

the only time you say you were there. A. That is right.

Q. You did not threaten Rosen, did you? A. Of course not.

Q. You did not intimidate him? A. Of course not.

Q. You did not even speak in a boisterous tone to him, did you? A. Hardly ever do.

Q. You were quite gentlemanly with him? A. I was.

Q. You did absolutely nothing wrong?

4988

Mr. Turkus: Just a minute. That is for the jury to decide.

Mr. Barshay: He says she did not.

Mr. Turkus: That is for the jury to decide, whether when he delivered Lepke's message and the \$200, whether he did something wrong or not.

The Court: Yes, the jury will have to say.

Q. I am speaking of you personally, Mr. Rubin. You, yourself, of your own free will, did absolutely nothing wrong with respect to Rosen in that store on that day?

4989

Mr. Turkus: It is for the jury to say.

The Court: Sustained.

Mr. Barshay: Exception.

Q. You gave him \$200? A. I did.

The Court: The question of right or wrong is an indefinite term, solely a matter of viewpoint and largely influenced by

4990

Max Rubin—For People—Cross

whether or not the person himself does it. You are entitled to cross-examine thoroughly on the question as to what extent, if any, this defendant, and whether or not this defendant, was in any way implicated as principal or as an accessory in this alleged murder.

Mr. Barshay: You mean this defendant, or this witness?

4991

The Court: This witness. The ruling is only on the question of the use of the word.

Q. You had some money belonging to Buchalter there? A. I did.

Q. You gave it to Rosen? A. The money he told me to give to Rosen, I gave to Rosen; yes.

Q. And, giving it to him, you threatened him, not at all? A. Absolutely not.

Q. You told him to go out of town? A. I told him that Lepke told me to tell him to go out of town and stay out until he tells him to come back.

4992

Q. There were no instructions—

The Court: That was not at the baseball game?

Mr. Barshay: This has nothing to do with it.

The Witness: He is talking about July, 1936.

Mr. Barshay: When he went there with a man by the name of Feinberg.

The Witness: Louis Feinberg.

Q. You were not instructed to tell Rosen to sell his candy store? A. I was not.

Q. You were not? A. No, sir.

Q. You were not instructed to have Rosen go some place under an assumed name? A. I was not.

Q. You were not instructed for him to go to any particular place? A. I was not.

Q. You were not instructed for him to close the store and take his wife and family? A. I was not.

4994

Q. You were not instructed to give Rosen any other instructions to become a fugitive, were you? A. Oh, yes.

Q. Wait a minute. —in the sense of disguising, concealing, or using an assumed name, were you?

Mr. Turkus: I object to it. That is not the testimony.

Mr. Barshay: He knows whether he was or not.

Mr. Turkus: The jury draws the inference from the authorization as to what that meant when Lepke sent a message to get out of town.

4995

The Court: It is a confusing question because it calls for two different things. Divide it up.

Mr. Barshay: I will withdraw it.

Q. Did Buchalter tell you to tell Rosen to conceal himself? Did he? A. Yes.

The Court: The word "conceal"?

4996

Max Rubin—For People—Cross

Mr. Barshay: Yes.

The Witness: Said, "Get out of town."
Concealing by orders.

Q. I am asking a specific question.

The Court: Did he use the word "con-
ceal"?The Witness: No, he did not use the
word "conceal."

4997

Q. Did he use the word "disguise"? A. He
did not.Q. Did he tell you to tell Rosen to leave no
trace of his whereabouts? A. He did not.Q. Did he tell you to tell Rosen to close the
candy store until such time as he receives word
to come back? A. He did not.Q. Did he tell you to tell Rosen to register
some place under an assumed name? A. He did
not.Q. Did he tell you to tell Rosen not to go
to Reading, Pennsylvania, where his son lived?
A. He did not.

4998

Q. Did he tell you to tell Rosen that more
money would be forthcoming, in that conversa-
tion; yes or no? A. He did not.The Court: Briefly, did he tell you
anything—be careful now; listen carefully
—did he tell you anything besides that
you should give \$200 to Rosen and have
Rosen to stay away until he, Buchalter,
told him to come back?

The Witness: Nothing else besides that.

The Court: That was all that was said
on that subject?

The Witness: That is right.

Q. And that was all you did? A. That is all I did.

Q. So that when you and Rosen finished the conversation, in the absence of Feinberg, you said nothing to Rosen that, "If you don't do this, something is going to happen to you", did you?

A. I did not.

Q. Not even an intimation? A. Not an intimation.

Q. You left him in good spirits? A. I thought I did.

5000

Q. Did he tell you where he was going? A. Yes.

Q. Where? A. Reading, Pennsylvania, to his son's.

Q. And you reported that to Buchalter? A. I did.

Q. His son's name was Rosen, too? A. Yes.

Q. Harold Rosen? A. Yes.

Q. To your knowledge, at that time Harold Rosen and his father were friendly? A. As far as I know.

Q. The family relationship was friendly? A. I can't tell you that, except that he told me he was going there, so I take it that it must have been friendly.

5001

Q. And then he came back, or did he at that time say, rather, that he would like to have another thousand dollars? A. At that time he told me if he sold his store for a thousand dollars he would go up there and open a little business, when I gave him the two hundred.

Q. Will you repeat that answer, please? A. At that time, when I gave him the two hundred

5002

Max Rubin—For People—Cross

dollars, he said if he had another thousand dollars he would open a business out of town.

Mr. Barshay: Will your Honor let the stenographer—

The Court: Let him finish this. He has not finished.

Mr. Barshay: I wanted the answer, your Honor, from the stenographer.

The Court: You are interrupting.

5003

The Witness: That is the best answer I remember.

The Court: Is that substantially what he told you?

The Witness: Yes, surely.

The Court: Without being the exact words?

The Witness: That is about it.

Mr. Barshay: I ask your Honor to have the stenographer read the first answer to that question.

The Court: Why?

5004

Mr. Barshay: Because it was different, in my opinion, than the one he gave now.

The Court: You heard it?

Mr. Barshay: I heard it.

The Court: Presumably the jury heard it.

Mr. Barshay: Can't we have it again?

The Court: All right.

(The following was read by the reporter: "At that time he told me if he sold his store for a thousand dollars he would go up there and open a little business, when I gave him the two hundred.")

Q. That is what you said at first, isn't that so?

Mr. Turkus: I object to it. That appears in the record.

Mr. Barshay: Then it is conceded that he did say that?

Mr. Turkus: You cannot stipulate with this. The record shows.

Mr. Barshay: Don't concede it. Mr. Turkus: the record shows it.

The Court: The jury will figure out whether that is substantially correct.

The Witness: Instead of "sold", I should have said "got". Is that what you mean?

Mr. Barshay: I will tell you what I mean in a second.

Q. Did he tell you that he wanted \$1,000 from Buchalter or from you or that he wanted to sell the store? A. I said he wanted a thousand dollars. I did not say he wanted a thousand dollars more from Buchalter. If he got another thousand dollars—

Q. Was it from you, from Buchalter, or through you or through Buchalter? A. He did not say. He just said, if he got another thousand dollars.

Q. Did you tell Buchalter that he wanted another thousand dollars by selling the store? A. I just said, "He said if he got another thousand dollars he would open a business out of town," yes.

Q. With his son, or near his son? A. Yes, in Reading, Pennsylvania.

5008

Max Rubin—For People—Cross

Q. Buchalter said nothing about that? A. He said nothing to it.

Q. So as far as your own personal conduct is concerned in the store on that day, Mr. Rubin, you did nothing which in your own mind violated any law whatever?

Mr. Turkus: I object to it. That is for the jury to decide, when he delivered that message.

The Court: Sustained.

Mr. Barshay: Exception.

5009

Q. And after you read the newspaper, you said you saw Buchalter and you said to him, "Now I am in trouble." Did you? A. That is right.

Q. Were you in trouble? A. I ask you whether being in the store in July, when a man gets killed in September, whether you are not in trouble.

Q. All right, the Court won't allow me to answer the question, so I won't.

5010

The Court: The Court has not ruled on that.

Mr. Barshay: If you want me to answer it, I will.

The Witness: You cannot answer it, because I would ask you where you were at that time. Maybe you can tell me.

The Court: Go ahead with the next question.

Mr. Barshay: Take it easy, Mr. Rubin.

The Witness: Don't accuse me of things. I will admit everything I know

Max Rubin—For People—Cross

5011

that I ever did. I am willing to open myself up to any accusation that I am guilty of, but don't insinuate anything that is not so. Be open and above board and on the level with your questions and don't be throwing any hints, because I have had enough experience with you and your kind.

The Court: Strike that out. The jury disregard it.

Mr. Barshay: I move for the withdrawal of a juror and the declaration of a mistrial.

5012

The Court: Denied.

Mr. Barshay: Exception. I ask your Honor to do something about this witness.

The Court: What do you want me to do?

Mr. Barshay: I know what I would get if I conducted myself in this fashion.

The Court: Don't give an answer like that. Make a motion. Ask me something that I can rule on.

5013

Mr. Barshay: I ask your Honor to hold this witness in contempt.

The Court: I will take care of that at the proper time.

Mr. Barshay: Now I ask your Honor to admonish this witness not to argue with counsel, and answer questions.

The Court: I remind you of this, that holding for contempt is a job of the Court, without any suggestion of counsel at any time. The Court will take care of its own dignity.

Mr. Barshay: I ask your Honor to

5014

Max Rubin—For People—Cross

admonish this witness not to repeat this again.

The Court: The witness is so admonished.

Q. Mr. Rubin, I did not accuse you of anything, did I?

The Court: Mr. Rubin, it is very important that you maintain your composure and put your mind on the examination and, no matter what the strain may be, try to avoid any and all further emotional outbursts. Just put your brains on it, not your emotions. Go ahead, counsel.

~~5015~~

Q. Mr. Rubin, I did not accuse you of anything, did I?

Mr. Turkus: Objection.

The Court: Don't start anything again. That is only quarreling. Sustained.

Mr. Barshay: I take an exception.

5016

Q. I am trying to prove you did not do anything in the Rosen store, Mr. Rubin. Do you understand me?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

Q. And I say to you again: You did nothing wrong in the Rosen store, personally, did you?

Mr. Turkus: I object to it.

Max Rubin—For People—Cross

5017

The Court: Sustained.

Mr. Barshay: Exception.

Q. Nevertheless, you said to him, "Now I am in trouble", is that so?

Mr. Turkus: I object to the "nevertheless."

The Court: Sustained.

Q. And you said to him further, "I was there in July and now I am in real trouble." Did you say that to him? A. I did.

5018

Q. But y u personally were not in any trouble whatever, were you?

Mr. Turkus: That ~~was~~ answered before, and we had some altercation.

Mr. Barshay: This is another sentence, Mr. Turkus.

Mr. Turkus: All right, if you want to pursue it.

Mr. Barshay: Yes.

Mr. Turkus: Objection withdrawn.

5019

A. I felt I was in tremendous trouble. I felt as if the world was coming to an end as far as I was concerned and if you ask me why, I will tell you why.

Q. I am not asking you why, I am merely repeating what you just said. A. I will tell you why I had this particular feeling.

Q. If your conscience is bothering you, Mr. Rubin, I cannot help it. A. It is not my conscience.

5020

Max Rubin—For People—Cross

Mr. Turkus: That is inviting another outburst.

A. (continued) Maybe years.

Q. You won't get me to roll in the gutter with you, Mr. Rubin.

Mr. Turkus: Please. I object to this, your Honor.

The Court: Stop.

5021

A. I rolled in the gutter with a bullet hole wound.

The Court: Strike that out. The jury disregard it.

Mr. Barshay: I move for the withdrawal of a juror and declaration of a mistrial.

The Court: Denied upon the ground you provoked it, a normal reaction.

Mr. Barshay: I take exception to your Honor's remark, and on the remark that your Honor made I move for the withdrawal of a juror and the declaration of a mistrial.

5022

The Court: Denied.

Mr. Barshay: Exception.

The Court: This is an intelligent jury and I believe will obey the Court's instructions too.

Mr. Barshay: I object to your Honor saying I provoked anything.

The Witness: You said I was in the gutter.

Max Rubin—For People—Cross

5023

Mr. Turkus: May we have a five-minute recess for the witness?

The Court: I think I will take a five-minute recess both for the witness and counsel.

Mr. Barshay: I object to your Honor saying counsel needs any recess.

The Court: You are highly excited.

Mr. Barshay: I am not excited but I won't tolerate any abuse from anyone in this court-room.

5024

The Court: You are shouting—

Mr. Barshay: I am not, sir.

The Court: Showing disrespect of the Court, even interrupting it.

Mr. Barshay: The Court is going to treat me with respect, and I am entitled to it, and I have been treated with respect for eighteen years and I have returned that respect, and you know it better than any other man.

The Court: Compose yourself. The witness will retire. The jury disregard this. Pay no attention to it; don't be influenced by it.

5025

(The witness leaves the stand, and after a short time resumes the stand.)

By Mr. Barshay:

Q. Buchalter further said to you, "You have nothing to worry about", did he? A. That is right.

Q. And he added, "You have nothing to worry

5026

Max Rubin—For People—Cross

about as far as Brooklyn is concerned"? A. That is right.

Q. This was in September of 1936? A. That is right.

Q. There is no mistake about that? A. No mistake.

Q. Answer this yes or no, please: Did you know at that time that in the Borough of Brooklyn there was a Special Prosecutor by the name of Hiram Todd at that time; yes or no?

5027

Mr. Turkus: Just a minute—investigating a special matter.

Mr. Barshay: Please, Mr. Turkus—

Mr. Turkus: I object to it. It is incompetent, irrelevant, immaterial, having nothing to do with this indictment.

Mr. Barshay: I asked a simple question, if he knew it or he did not, and Mr. Turkus puts an answer in the gentleman's mouth.

"

5028

The Court: Sustained. Mr. Todd's investigation is of no consequence here. We are not going to litigate it.

Mr. Barshay: I did not even say it is or it is not.

The Court: The Court knows that it is not.

Mr. Barshay: Will your Honor concede for the record that he was a Special Investigator, then; yes or no?

The Court: He was investigating the Drukman case. He had no such general powers as Mr. Dewey. What difference does it make?

Mr. Barshay: I take an exception, sir.

Max Rubin—For People—Cress

5029

Q. You did not leave town thereafter, did you, Mr. Rubin, on September 15th, did you? A. No, sir.

Q. You did not leave town on September 16th? A. No, sir.

Q. You did not leave town on September 17th? A. No, sir.

Q. You did not leave town on September 18th? A. I don't think so.

Q. Or the 19th? A. No, I don't think I left.

Q. Or the 20th? A. No, sir.

Q. Or the 21st? A. No, sir.

Q. Or the 22nd? A. I don't believe I left town during that period at all.

Q. How long did you stay, after you came back from Atlantic City, in the City of New York, before you went away for the very first time? A. I think I stayed until the middle of October.

Q. What? A. I think in New York until the middle of October.

Q. You attended to your regular business? A. I did.

Q. Went to your home? A. I did.

Q. Saw your family? A. I did.

Q. Worked at the union? A. I did.

Q. Saw your customers? A. I did.

Q. Did not disguise yourself? A. No, sir.

Q. Lived the normal daily life? A. That is right.

Q. Anybody come to the office from Brooklyn to look for you, police or district attorney, during that period, any single day? A. No.

Q. Anyone leave word at your home from the

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Max Rubin—For People—Cross

Police Department or District Attorney's office at any time before you left? A. No, sir.

Q. Anyone call you by phone or leave a message for you, or in any way, directly or indirectly, during that period notify you that you were being sought? A. No, sir.

Q. Or wanted for questioning? A. No, sir.

Q. Not a word, is that so? A. Not a word.

5033

Q. In the meantime, Dewey was becoming very active in the flour cases, was he not? A. Becoming active in general.

Q. But very active in the direction of Buchalter in the flour situation, was he not? A. In September of 1936?

Q. From then on. A. I imagine so. I am not so sure.

Q. You learned or you knew personally? You knew personally that witnesses in the flour industry were now being subpoenaed and questioned by Thomas Dewey in the flour investigation at that very time?

5034

Mr. Turkus: I object to it. Mr. Dewey's investigations are known to him, what he was investigating in 1936, not to the witness.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Did you know that of your own personal knowledge?

Mr. Turkus: Object to it.

The Court: I cannot see its relevancy. Sustained.

Mr. Barshay: I take an exception.

The Court: This is cross-examination. The witness testified to a long series of ramblings, covering a considerable period of time, while allegedly keeping away from New York for a specific purpose, and then coming back because he could not be away any more; he got lonely.

Mr. Barshay: May I address the Court?

The Court: Just a minute. According to the direct examination, he did not go to Mr. Dewey until after he came back and consulted with a lawyer.

5036

Mr. Barshay: All right. I will tell the Court what I have in mind and maybe we can get along. It was undoubtedly the attempted proof by Mr. Turkus that this man was induced to flee from the authorities in Brooklyn on the theory of inducement of flight and consciousness of guilt.

The Court: I assume that is true.

Mr. Barshay: That is correct. And now I am in possession of proof, and I am trying to prove through this witness, that this flight that he said was induced because of this case had absolutely nothing to do with this case but that he was fleeing from the Dewey investigation in New York, and he so testified in another place, under oath, in another court. That is the purpose of my proof.

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The Court: Very well, then, you may cross-examine on that point.

Mr. Barshay: That is what I am trying to.

5038

Max Rubin—For People—Cross

Q. In New York, however, Mr. Rubin, you did participate in extortions, did you not? I mean in the Borough of Manhattan.

Mr. Turkus: It has been already answered.

Mr. Barshay: Preliminary question.

A. In the flour situation?

Q. Yes, I am talking about the flour. A. Yes.

5039

Q. And that was the inquiry that Thomas E. Dewey was then diligently proceeding with?

Mr. Turkus: I object to it. Mr. Dewey knows everything he was investigating, not this witness.

The Court: The witness can say whether or not he knew that at the time he went away.

Mr. Turkus: He may have known more.

The Court: Overruled.

5040

Q. You knew that yourself? A. I did not know what particular thing he was investigating.

Q. Well— A. He had general powers.

Q. You spoke, did you not, to this jury on direct examination with respect to Buchalter telling you that Dewey had certain wires tapped?

A. That is right.

Q. Then you knew that Dewey was investigating Buchalter, did you not? A. I knew there was an investigation, of course.

Q. You knew that? A. Of course.

Q. You knew that Thomas E. Dewey could tie up Buchalter through you, isn't that so? A. I knew that that could be done, yes.

Max Rubin—For People—Cross

5041

Q. Subsequently he did tie up Buchalter in the flour investigation through you? A. That is right.

Q. And the thing that Dewey was investigating about Buchalter in those days was the flour extortion in which you participated?

Mr. Turkus: That is not the limit of the Dewey investigation.

Mr. Barshay: I do not say it was.

Mr. Turkus: Let us not confuse the jury.

5042

Mr. Barshay: Let the jury say later on whether they are confused or not, Mr. Turkus.

Mr. Turkus: I object to it, your Honor. This witness cannot tell what Mr. Dewey was investigating unless there were leaks from Mr. Dewey's office.

The Court: The witness said at the time of going away he did not know on that point. The present question is not as to whether or not he did know at that time on that point, but as to what Mr. Dewey was doing. That is incompetent. Sustained.

5043

Mr. Barshay: Exception.

Q. You knew what Mr. Dewey was doing with respect to Buchalter's activities in the flour industry? A. I did not. He was making a general investigation.

Q. You know he investigated one industry at a time, don't you? A. There were different men there who investigated different industries. I cannot state specifically. I took it for granted

5044

Mar Rubin—For People—Cross

and I agree with you that the flour was among the many branches that he was investigating.

Q. You said on direct testimony that Buchalter told you the wires were tapped? A. Yes.

Q. Buchalter told you that a Dictaphone was in the Tailoring Association office?

Mr. Turkus: I object to it. There is no such direct testimony.

5045

Q. In some office. A. You mean in Local 138?

Q. 138, was it?

Mr. Turkus: Please. I have an objection. You cannot have any repartee when there is objection. There is no such testimony in the record about a Dictaphone. The conversation was about a book of matches and a number on the cover.

Mr. Cuff: We object to the statement.

The Court: Gramercy 9043.

The Witness: Gramercy 5-9043.

5046

Q. Whose number was that? A. Association, Greater New York Tailors Expressmen's Association.

Q. Anything else that Buchalter told you?

Mr. Turkus: I object unless the time be fixed.

Q. Then and there, about September of 1936, and that is the only time we are speaking of.

Mr. Turkus: I ask, before or after the Rosen murder?

Max Rubin—For People—Cross

5047

Mr. Barshay: Long after the Rosen murder.

The Court: You mean at the time of the match book incident?

Mr. Barshay: Yes.

The Court: Anything else said?

A. He told me that he thought there was a Dictaphone in the room and that I should tell Wolfie Goldis to buy a radio and if we put a radio on loud enough, if there is a Dictaphone in the room, you cannot hear any of the conversation.

5048

Q. Wolfie Goldis was the man who was interested in the flour investigation, wasn't he? A. Wolfie Goldis was—

Q. One of the men? A. In 138, an official of the union.

Q. That is the flour. And so Buchalter was giving you information personally that 138 was being investigated, did he not? A. That is right.

Q. And you in your mind then knew that an investigation of 138 in the flour industry would undoubtedly involve your own personal self, did you not? A. I did not think of it at the time.

5049

Q. It did not occur to your mind at all? A. No, I was very secure in the magic powers of Mr. Buchalter.

Q. You thought— A. I was lulled into a sense of security.

Q. You thought he could do things with Thomas E. Dewey; yes or no? A. I did not say that.

Q. You tell us now when Buchalter was telling you that 138, the flour local, was being investi-

5050

Max Rubin—For People—Cross

gated, you did not have in your mind one single thought of the extortions that you participated and shared in; is that what you tell us?

Mr. Turkus: Objected to. He has answered about being lulled into security.

The Court: Sustained.

Mr. Barshay: Exception.

5051

Q. Didn't Buchalter tell you the very first time you went to Saratoga that it was because of the Dewey investigation? A. Positively not.

Q. Positively not? A. Positively not.

Q. No doubt about that? A. Absolutely no doubt.

Q. You testified in the flour case, did you not, as you said? A. I did.

Q. Were you asked this question, at page 1144:

"Q. Now you claim that Buchalter told you to leave and go to Saratoga, is that right? A. That is right."

5052

Did you make that answer to the question the way I read it? A. I guess so. You are reading it correctly, I hope.

Q. You can take my word for some things. A. Then don't ask me whether I remember it. If you read it, I will take it for granted it is correct.

Mr. Barshay: Will Mr. Turkus concede I am reading correctly?

Mr. Turkus: Let us not quibble over it. Of course you are.

Q. Were you asked this question: "Q. And I believe you testified that that was to avoid being

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questioned by Mr. Dewey or his staff? A. That is right." Was that question asked and that answer made by you in the flour case? A. If it is there, I answered it.

Mr. Barshay: Mr. Turkus—

Mr. Turkus: It is there. We will not quibble about it.

Q. Were you asked further, at page 1161: "Q. Well—"

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Mr. Turkus: What folio?

Mr. Barshay: 3483.

Mr. Turkus: All right.

Q. "Q. Well, at the time you say Lepke told you to go away, did you testify here that he told you to go away on account of the Dewey investigation? A. That is right." Was that question asked and was that answer made by you? A. That is right.

Q. So the first place you went was to Saratoga? A. That is right.

5055

Q. You had a talk with Buchalter before you went to Saratoga? A. That is right.

Q. Where was that talk, Mr. Rubin? A. I think over at the Perfection Coat Front or Greenberg & Kupperman. Oh, you mean in 1936?

Q. Yes. A. I think it was at the Raleigh.

Q. He told you that you had to go away? A. That is right.

Q. That is the very first time? A. That is right.

Q. Give us again, please, your language, as best you know how, what Buchalter said to you at that time, the early part of October? A. He told me

5056

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that things were too hot, that McCarthy was going around saying he is going to make one of the greatest pinches he ever made, he is going to collar Lepke and Gurrah. He told me that I would have to go away and I told him I did not know where to go and he said that Danny Fields is up in Saratoga Springs and I should get Paul Berger and Paul Berger would take me up there; before I could go there I should take Paul Berger to certain places.

5057

Q. Have you got the date in your mind? A. About the middle of October.

Q. Now you have told us everything Buchalter has said? A. I think so.

Q. Do you know the time of the day, if you can? A. No, I don't.

Q. Do you know the time of the day? A. No, I don't.

Q. Was it at night? Was it? A. No, I don't believe.

Q. Was anyone present? A. I don't remember.

Q. Was your memory fresher in 1940 with respect to this than it is now?

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Mr. Turkus: I object to that.

A. I don't know.

Mr. Turkus: It calls for a conclusion.

The Court: Calls for an opinion.

Mr. Barsbay: His own opinion, of his own mind.

The Court: I think it is a matter of argument to the jury. (To witness) What do you think on the subject?

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The Witness: I am getting older and sicker.

The Court: Does your memory improve with age?

The Witness: It certainly does not.

Q. In other words, the longer away from an event, the better you remember it?

Mr. Turkus: He did not say that.

Mr. Barshay: He said it gets better with age.

5060

The Witness: I said it gets worse.

Mr. Barshay: I am sorry. I did not hear it.

Q. So we can reasonably assume that your memory was better in 1940 when you testified in the flour case than it is now? A. I try to recollect thinks as best I know how without any prompting from anybody.

Q. I did not suggest anything. A. That is the implication to me by the question.

Q. You testified with respect to flight as against the defendant Buchalter in the flour case before Judge Freschi in General Sessions in 1940, is that so? A. That is right.

5061

Q. And the same place that you testified here that you fled from the Rosen case you testified there you fled from the Dewey investigation, isn't that so? A. No.

Q. Did you go to any other place? A. Any other place than I say there that I went? You mean cities where I went like Saratoga and so on?

Q. That is right. A. Those are the places.

Q. You said you left for Saratoga and New

5062

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Orleans, and the talk in Washington and Philadelphia? A. That is right.

Q. You remember all that? A. I do.

Q. There are not any additional places that you are testifying here that you went to that you did not testify there? A. No, sir.

Q. The District Attorney there asked you questions with respect to what Buchalter said to you before you went to Saratoga, did he not? A. I think he did.

5063

Q. And you answered? A. Yes.

Mr. Barshay: Page 961, flour record.

Q. You keep in mind, Mr. Rubin, what you said here a few seconds ago what Buchalter said to you, will you? A. Yes.

Q. Were you asked these questions: "Q. Now when did you go away? A. The middle of October, 1936." Did you make that answer to that question? A. I did.

Q. "Q. And did you have a conversation with defendant Buchalter about it? A. Yes." Did you make that answer to that question? A. Yes.

5064

Q. "Q. How long before you went away? A. A week, two weeks.

"Q. What was said between you?

"Mr. Price: Objection on the ground it is not binding on my client.

"The Court: I will take it as against the defendant Buchalter.

"Q. What did he say? A. He told me I was getting too hot and I should go away." Did you

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5065

give that answer to that question? A. If it is there, I made it, yes.

Q. You can take my word I am reading correctly.

"Q. What did you say?—A. I said I did not know where to go." Was that answer made by you to that question? A. It was.

Q. "Q. Did he say anything else?" and did you make this answer: "A. That having a job and working for a union I could not go away. He told me things were too hot. He seemed to have an idea—

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"Mr. Kleinman: I object to this.

"Mr. Grumet: All right.

"Mr. Kleinman: I ask him not to volunteer anything.

"The Court: Yes.

"Q. —"

Mr. Turkus: That answer was interrupted.

Mr. Barshay: By whom?

5067

Mr. Turkus: By Mr. Kleinman the lawyer for Lepke.

Mr. Barshay: I cannot help it. I am reading correctly, am I not?

Mr. Turkus: Will your Honor take a look at the record? That answer was interrupted by Mr. Kleinman who then represented Buchalter or Lepke as he has been called here and there, so that that answer is not complete, the Court having sustained and admonished the witness not

5068

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to pursue that any further, so how can that be the concern of this jury?

The Court: Go ahead with your question.

Mr. Barshay: Very clever argument, Mr. Turkus.

Mr. Turkus: This is no time for compliments. I have an objection.

Mr. Barshay: I don't mean that as a compliment either.

5069

Mr. Turkus: Then it is no time for insults either, if he means it that way.

Mr. Barshay: I don't insult you. I am reading correctly and that is all I care about.

The Court: Read the rest.

Q. "Q. Did he say anything about Dewey?

A. He said the investigation was too hot, that things were getting too hot." Did you give that answer to that question as I read it?

5070

Mr. Turkus: The very next question.

Mr. Barshay: Mr. Turkus, you know very well you have a right to read that next question at the proper time and please don't do it again.

The Court: You read a series of questions. As long as you have seen fit to read a series of questions, complete the context.

Mr. Turkus: There is one more question and answer.

Mr. Barshay: I did not say I am not going to read it, I did not say I am, but I have a right, your Honor, to pursue

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5071

my cross-examination in the way I planned it and I won't deprive Mr. Turkus of any rights to read any other question.

The Court: When the Court rules, please continue the context.

Mr. Barshay: I take an exception.

The Court: As far as it relates to and qualifies and becomes naturally a part of this question.

Mr. Barskay: Will your Honor instruct the jury that by no innuendo is it conveyed to the jury that I am not going to read, or I did not intend to read, or I intended to exclude the next question from this Court and jury?

5072

The Court: Will you please proceed and finish it?

Mr. Barshay: Exception.

Q. "Q. Did he say anything at that time about Dewey? A. No." Were those questions asked of you and did you make those answers? A. That is right.

5073

Mr. Barsbay: Then there was a discussion, Mr. Turkus, between Mr. Kleinman and the Court and I am proceeding to the bottom of the page, page 962.

Q. "Q. Where did you go? A. I went to Saratoga Springs." May I refresh your recollection on that point, Mr. Rubin. A. Will you repeat that?

Q. "Q. Where did you go? A. I went to Saratoga Springs." A. That is right.

5074

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Q. Is that right? A. That is right.

Q. Were you asked these questions:

"Q. Did you have a conversation with Lepke about it before you went to Saratoga Springs?

A. I did." A. That is right.

Q. And again were you asked:

"Q. What was said? A. He told me to go up." Then there is—

Mr. Turkus: I ask that you read that.

5075

Mr. Barshay: "He told me to go up" and there is an answer interrupted Mr. Kleinman interrupting, "I object to it.

"The Court: I shall receive this as to the defendant Lepke only.

"Mr. Kleinman: Exception.

A. He told me to go up there." Did you answer the questions the way I read them? A. I did.

5076

Q. "Q. What else did he say about it? A. He said I would find Danny Fields up there, that Danny Fields was right below Saratoga Springs and I would find Danny up there. I would have company." Did you make that answer to that question? A. I did.

Q. And so you gave to the questioner then, the Assistant District Attorney from Mr. Dewey's office in charge of the prosecution, the full conversation that you had with Buchalter before you went to Saratoga; is that correct?

Mr. Turkus: I object to it. There is nothing inconsistent.

The Court: Do you remember whether you gave him every detail?

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5077

Mr. Barshay: I object to your Honor's question.

The Court: Overruled.

Mr. Barshay: Exception.

The Court: Mr. Witness, do you remember whether you gave all details of that conversation?

The Witness: I ~~did~~ not give all the details of the conversation. I gave all that I could remember. I was concentrating on the case ~~dealing~~ with that particular court and that case and I gave him answers to cover that particular case and when you speak of the Dewey investigation, any particular place, to me wherever there was any question at all about Dewey it was part of his jurisdiction.

5078

Q. You did not say a word there about McCarthy, did you?

Mr. Turkus: I object to that. That would have been bringing in a matter of another incident that might have made reversible error in New York.

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Mr. Barshay: I object to Mr. Turkus' statement and I wish he would not do that, your Honor. It is most unfair when a man is cross-examined and is in the box to be pulled out of the hole in just that way.

Mr. Turkus: I am not pulling anyone out of the hole. I am addressing the Court.

The Court: Mr. Turkus' objection is correct. Sustained.

5080

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Mr. Barshay: I except, your Honor.

Q. You understood, did you not, when the District Attorney questioned you there, when he said, "What else was said?" You understood the meaning of that word, did you?

Mr. Turkus: I object to it because if the witness was to bring out anything—

5081

Mr. Barshay: Can he make an objection, your Honor, without a speech?

Mr. Turkus: I have urged the ground if he brought in some other incident.

The Court: If the Rosen case were brought out in the flour case, there would promptly have been a motion by Mr. Kleinman for a mistrial.

Mr. Barshay: Is that so, your Honor? Will your Honor please look at the record and see whether it was brought out or was not brought out in the Rosen case?

Mr. Turkus: By the District Attorney, if it were brought out.

5082

Mr. Barshay: In the flour case, your Honor.

The Court: By the District Attorney?

Mr. Barshay: By both sides.

The Court: All right, now proceed. Come to order and don't forget yourself.

Mr. Barshay: I take an exception to that.

The Court: Counselor says this (note on the record) in an angry resentful tone.

Mr. Barshay: I take an exception to that. I am neither angry nor resentful.

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5083

I am merely asserting my rights, your Honor.

The Court: Will you please come to order and resume the cross-examination?

Q. You did testify with respect to the Rosen case in the flour case, too, did you not?

Mr. Turkus: I object unless it be brought out whether it was on direct examination or cross-examination?

5084

The Court: Sustained.

Q. Did you testify on both direct and cross with respect to the Rosen case?

The Court: Is there an objection to that?

Mr. Turkus: There is.

The Court: Sustained.

Q. As a matter of fact weren't you questioned by the Assistant District Attorney Mr. Grunet—

5085

The Court: The Court instructs you to come to order and not ask any more questions on that line.

Mr. Barshay: I take an exception to that.

The Court: Now you are trying to provoke a quarrel with the Court.

Mr. Barshay: I do not want to quarrel with the Court but I am going to make my record.

The Court: You are going to make the

5086

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record accounting to Hoyle as a lawyer should.

Mr. Barshay: That is what I am doing.

The Court: And stop interrupting the Court.

Mr. Barshay: I ask for permission to put a question at page 1175 asked by the Assistant District Attorney.

5087

The Court: Put your questions, only don't violate the Court's instructions.

Mr. Turkus: May it be noted that page 1175 is redirect by the District Attorney after cross-examination?

Mr. Barshay: That is right.

Mr. Turkus: That is an entirely—

Mr. Barshay: What difference does it make?

Mr. Turkus: The Judge will tell the jury.

5088

The Court: Will you resume the trial of your case and stop playing to the gallery? If you were trying this case without a jury and without an audience, you would have your manners with you because you would not want to antagonize the Court and would have a decision on the facts.

Mr. Barshay: I take an exception to that.

The Court: I am trying this case without a gavel.

Mr. Barshay: I don't need a gavel.

The Court: The Court at all times is

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5089

maintaining its poise. Now please proceed with the case.

Mr. Barshay: And let the record show that counsel is not losing its poise.

The Court: Because if the Court did you would probably get an exception on the record and get a motion for a mistrial and there might be something to it, as you know.

Mr. Barshay: Let the record show that counsel is absolutely calm and collected and is not baiting the Court and I move for the withdrawal of a juror based upon the Court's remarks and the declaration of a mistrial on the ground of prejudice.

5090

The Court: Denied.

Mr. Barshay: Exception, sir.

Q. (Page 1212 of this record) When you got back from Saratoga, Mr. Rubin, you met the defendant Buchalter at the Hatfield Hotel. Is that correct? A. That is right.

Q. And here you said: "Q. Did he say why he wanted to send you away? A. Yes. He told me things were getting too hot." Is that correct? A. That is right.

5091

Q. "Q. Where? A. That Brooklyn was not straightened out yet and that the Dewey investigation is closing in on everybody." You said that? A. That is right.

Q. Now in the flour case (at page 964, folio 2896) were you asked these questions: "Q. Did you have a conversation with Buchalter after you returned to New York?" and did you give this answer: "I did."? A. That is right.

5092

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“Mr. Kleinman: Will you ask him, when, please, he returned?”

“Q. When did you return? A. I would say around the end of October, something in the 20's.” Did you give that answer to that question? A. That is right.

Q. “Q. You mean the latter part of October? A. Yes.” Did you give the answer to that question? A. That is right.

5693

Q. “Q. Did you have a conversation with the defendant Buchalter? A. Yes.

“Q. Tell us what was said?” A. I will answer yes to those things.

Q. “Q. Did you have a conversation with the defendant Buchalter? A. Yes.”? A. Yes.

Q. “Q. Tell us what was said?”

“Mr. Price: I object to it.

“The Court: I shall receive this as against the defendant Buchalter only.

“Mr. Kleinman: Exception.

5094

A. I told him I could not stay up there with Danny.

“Mr. Kleinman: I move to strike out that as not having been a part of anything involved in this case even though it purports to be a conversation with Buchalter.”

Do you remember those questions?

Mr. Turkus: You have to finish what the Court said.

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5095

Mr. Barshay: Please, one at a time. I have to make my record, sir.

Q. Did you give those answers to those questions? A. That is right.

Q. "The Court: Is that all the conversation that took place? I want to know this in order to rule.

"The Witness: That would be the gist of the conversation, yes.

5096

"The Court: You just told him why you did not stay?

"The Witness: I told him why. I gave him more details of the way that fellow was living up there and so he and I couldn't—" interruption by the Court

"I am going to allow that to stand.

"Mr. Kleinman: Exception."

Mr. Turkus: May it be indicated for our record now that the witness was interrupted in the conclusion of the answer at folio 2893 by the Court in that case?

5097

Mr. Barshay: I read every word, Mr. Turkus, just the way it followed and just the way you said.

Q. Were those questions asked? A. That is right.

Q. Were those answers made? A. That is right.

Q. Dewey was closing in on everybody, wasn't he? A. He was.

Q. And that everybody included you? A. I don't know if it included me.

Q. Again I say you were the very central

5098

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focus of the testimony against Buchalter in the flour case, were you not?

Mr. Turkus: I object to it.

A. I don't know that.

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

5099

Q. Did you have an idea in your mind then—

A. No District Attorney will tell you that so I don't know.

Q. Did you have an idea then in your mind from what Buchalter told you that you were involved?

Mr. Turkus: I object to it.

The Court: You mean in the flour investigation?

Mr. Barshay: I am only speaking of the flour investigation.

5100

The Court: When you went away to these various places, did you have that in mind?

The Witness: I had that in mind, yes, sir.

Q. In the meantime nobody was looking for you from Brooklyn, were they?

Mr. Turkus: Objected to.

Q. To your knowledge? A. That is right.

Q. Your wife was home? A. That is right.

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5101

Q. You made visits to the union when you came back? A. I did.

Q. You used your own name? A. That is right.

Q. You had a telephone? A. That is right.

Q. Paid rent? A. That is right.

Q. Made no effort to disguise yourself? A. No.

Q. Nobody from Brooklyn was looking for you at all, police or District Attorney, were they? A. That is right.

5102

Q. Isn't that so? A. That is so.

Q. And you were fleeing from the Dewey investigation, as per the instructions of defendant Buchalter, were you not? A. No, I was fleeing from investigations, Dewey and otherwise. I was more afraid of the Brooklyn case than I was of the Dewey case.

Q. You committed no crime in Brooklyn personally, did you? A. I did not commit any crime.

Q. That is all. A. But wait a minute.

The Court: Let him answer.

5103

The Witness: I can tell your Honor if you think it is advisable for me to repeat it to the Court, I will do it.

The Court: If there is any element of danger, don't repeat it.

The Witness: I don't want to go through this again but I could tell you why.

Mr. Cuff: I object to the statements of the witness, if your Honor pleases, and move to strike them out.

5104

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The Court: Better to shut it off right now.

Q. You knew, did you not, Paul Berger by name when you testified in the flour case? A. I did.

Q. You knew there was such a person? A. I did.

Q. Did you mention the name of Paul Berger in response to the Court's and Kleinman's questions with respect to Paul Berger once?

5105

Mr. Turkus: They were trying the flour case over in New York. They were not trying the Rosen case. As I pointed out, the District Attorney on direct is in one position. On redirect he may be in another, depending upon the cross.

The Court: Sustained.

Mr. Barshay: Exception.

5106

Q. You said somebody made arrangements for you to go to Saratoga to see Danny Fields, did you not? A. I did.

Q. You used the word "somebody"? A. That is right.

Q. You did not use the word "Paul Berger", did you? A. That is right.

Q. You used the word "somebody" on two occasions in that testimony, did you not?

Mr. Turkus: I object to it, it is incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. Were you protecting Paul Berger? A. I was protecting nobody.

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5107

Q. I am asking you. Was there a reason to leave out Paul Berger? A. Yes.

Q. Yes or no. A. There was a reason for leaving out every name. You will notice there is not a name there that I mentioned.

Mr. Barshay: I move to have the witness' answer stricken from the record. I asked a simple question, your Honor. I do not know how long this is going to continue.

5108

Mr. Turkus: The simple question was if he had a reason and he got a very simple answer, which was responsive to the simple question.

Mr. Barshay: And I was satisfied with the answer and the rest I move to strike out.

The Court: Strike out the latter part.

Q. Now Buchalter to your knowledge had never seen Maguire before? A. He had not.

Q. That is true, isn't it? A. That is right.

Q. Buchalter had lawyers of his own in those days, did he not? A. He did.

5109

Q. Maguire was not one of them? A. That is right.

Q. And to your own idea, from your own knowledge, Maguire was unknown to Buchalter? A. That is right.

Q. So much so that you had to introduce one to the other? A. That is right.

Q. You testified here that after the talk in Maguire's office you had a further talk in the hallway? A. That is right.

5110

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Q. With the defendant Buchalter? A. That is right.

Q. Not in the presence or in the hearing of anyone but you and Buchalter? A. That is right.

5111

Q. You testified here (page 1223 and 1224). "I did not want to tell you"—this is what Buchalter, you say, said to you in the hallway after you left Maguire—"I did not want to tell you this in front of Maguire but you have nothing to worry about. That case in Brooklyn is going to be thrown out of the window. McCarthy is not going to take care of it any more and Jacobs is going to come in and Jacobs is going to be pushed in something else in another building and the case will die". That is what you testified to here? A. That is right.

Q. (Page 967 of the flour case) Were you asked this question: "Did you and Buchalter leave Maguire's office together? A. Yes." Was that question asked? A. That is right.

5112

Q. And that answer made. "Q. (Next page) Did you have any other talk with the defendant Buchalter about going away? A. Out in the hall trying to—" somebody interrupted—

Mr. Turkus: Trying to (dash).

Mr. Barshay: I said somebody interrupted him.

"Q. (Interrupting) What did he say?"

Mr. Barshay: Do you want me to read Mr. Kleinman's objection?

Mr. Turkus: Yes.

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5113

Mr. Barshay: "Mr. Kleinman: Now if your Honor pleases, may I enter my objection and formulate it a little more legalistically than we did before. I simply entered an objection upon the ground that the conversation at that time was incompetent, irrelevant, immaterial. I submit now that this conversation could in nowise be in furtherance of the original conspiracy and the case of extortion alleged in the indictment, that if anything this tends to prove the commission of another crime, therefore it is not relevant and should not come into this case. I ask that it be stricken from the record as highly prejudicial.

5114

"The Court: I find this is competent testimony against defendant Buchalter. I overrule the objection.

"Mr. Kleinman: Exception.

"Please, Mr. Grumet, what is the question?"

"(The question was read)."

5115

All those things did take place as I read them?
A. Yes.

Q. "Q. What did he say"—referring to Buchalter and you in the hallway when you left Maguire's office—and did you make this answer: "He told me I have nothing to worry about, everything would be O.K. and I should trust him.

"Q. Anything else that you can remember?
A. That is all that." Did you make those answers to those questions? A. I did.

5116

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Q. Was your memory fresher in 1940 when you testified—

Mr. Turkus: Objected to.

Q. —in the flour case than it is now?

Mr. Turkus: Repetitious and argumentative.

The Court: Sustained.

5117

Mr. Barshay: Exception.

Q. Had you gone in detail with respect to the Rosen case in conversations with Buchalter? A. Had I gone?

Mr. Turkus: I object to this. I do not know when he is talking about, whether it is this trial, in the D. A.'s office, in the Manhattan trial, or what. It is objectionable.

The Court: Sustained as indefinite.

5118

Q. You met Buchalter in Albert's office? A. I did.

Q. Many times? A. From the time I came back until I went away again, about the 30th of October, I met him once and sometimes twice a day in the office.

Q. Was it for convenience sake that Albert's office was chosen by Buchalter and you?

Mr. Turkus: Objected to. That is not the testimony.

Mr. Barshay: I am asking him.

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5119

A Mr. Turkus: Buchalter has to answer that.

The Court: He cannot say what Buchalter's motive was.

Q. Was Buchalter being tried across the street from Albert's office on those days? A. Yes.

Q. Isn't that so? A. Yes.

Q. He was in court every single day? A. That is right.

Q. And after recess you would meet him in Albert's office? A. That is right.

5120

Q. Isn't that why Albert's office was chosen, according to what Buchalter said to you? A. No, it was the fact that he was being tried there may have been one of the reasons but the other reason was that—

Q. Please, was that one of the reasons? A. In my opinion it was one of the reasons.

Q. He was there on trial for a considerable number of days, was he not? A. I don't know for how long. I don't know if it was completed by the time I went away, that is the reason I say I do not know for how long. I left October 30th.

5121

Q. The Albert's office was at 2 Lafayette Street? A. That is right.

Q. Across the street? A. That is right.

Q. Did Buchalter tell you, "Meet me at Albert's office after the day session"? A. Meet me in Albert's office.

Q. You did not meet him during the trial days, did you? A. When did the trial start?

Q. You did not meet him when he was actually on trial, I am trying to show. It was after the

5122

Max Rubin—For People—Cross

court day? A. Or at noon recess he would come over there.

Q. You gave testimony here that pictures of yourself were held in your home by yourself or by your family? A. That is right.

Q. Buchalter did not ask you to destroy them, did he? A. No, he told me to give them to Willie Alberts.

Q. For safekeeping? A. That is right.

5123

Q. With instructions for Albert to return them to you later? A. I never got them back. I wish I could.

Q. When you went away, Mr. Rubin, from the very day you went away to Saratoga, no one had been looking for you from the Brooklyn District Attorney's office, had they? A. As far as I know, no one was.

Q. While you were in Salt Lake City you testified here that you received not one word from your home; is that correct? A. That is right.

Q. There is no doubt about that either? A. No doubt at all.

5124

Q. You testified in the case of The People of The United States of America against Polakoff and Albert, did you not? A. I did.

Q. That was in the Federal Court, Southern District, January 9, 1940? A. That is right.

Q. Were you asked this question there and did you make this answer?

Mr. Barshay: Mr. Turkus, do you want to see whether I am reading correctly?

Mr. Turkus: I will take your word for it.

Mar Rubin—For People—Cross

5125

Q. "Q. Do you know if any other County authorities of any county were looking for you at the time that you were in Salt Lake City?"

An objection by Mr. Halley:

"Objected to as assuming that somebody was looking for him.

"The Court: Where did you get your information about them looking for you?

"The Witness: I got word from my home that the New York County was looking for me."

5126

A. Not at that time. After I got back.

Q. Mr. Rubin, I asked you merely did you make this answer to the question as I read it.

Mr. Turkus: I object to it. It is not inconsistent with his testimony here.

The Court: Sustained. He did not say where he received word.

The Witness: I did not say I was in Salt Lake City when I got it.

Mr. Barshay: Your Honor, this man testified here that while he was in Salt Lake City—

5127

The Court: I know what he testified to. That answer is not inconsistent.

Mr. Barshay: I take an exception.

The Court: Simply misunderstood by you.

Mr. Barshay: May I read it again?

The Court: Yes. If I misunderstood I will be glad to correct the error.

Mr. Barshay: All right, sir.

5128

Max Rubin—For People—Cross

"Q. Do you know if any other County authorities of any Counties were looking for you at the time you were in Salt Lake City?

"Mr. Halley: Objected to as assuming that somebody was looking for him.

"The Court: Where did you get your information about them looking for you?

5129

"The Witness: I got word from my home that New York County was looking for me."

Your Honor, this refers to the fact that while he was in Salt Lake City he got word from his home.

The Court: I beg your pardon, the question, "Do you know?" is in praesenti and means, "Do you know as you sit here on the witness stand in the trial of the flour case?" The ruling of the Court stands.

Mr. Barshay: I take an exception to your Honor's interpretation, sir.

5130

The Court: It is no interpretation, but the plain meaning of the English language.

Q. Did you want to go away? A. I did not.

Q. Not at all? A. Not at all.

Q. Not in the slightest degree. A. Not in the slightest.

Q. You don't want to qualify that answer?
A. What is that?

Q. You don't want to qualify that answer?
A. I did not want to go away. I was scared terribly, very much frightened. I was so scared I almost died of fright and when the suggestion

to go away was made to me, I was happy to take it, but I did not want to go away. —

Q. In no way did you want to go away?

Mr. Turkus: I object to it.

Mr. Barshay: That is what I am trying to find out.

Mr. Turkus: The answer speaks for itself, what his feelings were at that time.

Q. In that same case, did you testify in United States of American against Polakoff and Albert?

5132

Were you asked this question: "Q. You were anxious to get away at the time? A. In a way, yes."

5

A. In a way, sure. That is the reason I kept on putting in "in a way", in a way that if I did not get away. Of course I had to answer it that way, "In a way, yes," and you will notice there are a few questions I answered that way, because I was warned, "Don't make any statement that will cause mistrials and mistrials", and I did not want to go over these things over and over again, so I kept on saying, "In a way" without completing my answer.

5133

Q. Before I read the question and answer to you, Mr. Rubin, I asked you to qualify it in every way you knew how. A. I am no magician and I have not got a crystal ball.

Q. Were you asked that question and did you make that answer? A. I did. You explain to me what "in a way" means.

The Court: Counsel, I call your attention to the fact you asked him if he wanted to go away. Now you confound him by a

5134

Mar Rubin—For People—Cross

question as to whether he was anxious to go away. The jury knows what that means. A man can go away reluctantly and leave his family reluctantly and be depressed about it and yet be anxious to get away for another reason, although not wanting to. The jury can figure that out.

Mr. Barshay: May I object to the Court's remarks? I take exception to your Honor's remarks.

5135

Q. Were you asked the following question:

"Q: You wanted to be away from this Grand Jury investigation, didn't you? A. In a way, yes." Did you say that? A. Yes, I answered several questions in that way: "In a way, yes."

The Court: Was it for pleasure or was it from a sense of fear?

The Witness: Absolutely from a sense of fear.

Mr. Barshay: I object to it and I ask again for the withdrawal of a juror and the declaration of a mistrial.

5136

The Court: Objection overruled. Motion denied.

Mr. Barshay: Exception.

Q. You testified here—

The Court: I mentioned "fear". For the record, the Court meant fear of being involved in something in the way of the investigations he has testified to. There is no implication in the Court's question

that justifies any insinuation of fear of bodily injury.

Mr. Barsbay: Will your Honor give me an exception?

The Court: I was wondering why you took your objection and exception. I can see it now. That is why I am trying to straighten out the record.

Q. You remember when Buchalter said to you to go to New Orleans? A. He did—or I did.

5138

Q. He told you that he would put you to work there with somebody in the slot machine business, did he not? A. That is right.

Q. You knew the name of that somebody when you testified in the flour case? A. I did.

Q. You did not mention that ~~somebody's~~ name in the flour case, did you? A. I did not.

Q. You took pains to mention it in this case, did you?

Mr. Turkes: I object to it.

The Court: Sustained as to form.

Mr. Barsbay: Exception.

5139

Q. Did you mention it in this case? A. I did.

Q. In this case you mentioned it was Frank Costello, did you not? A. That is right.

Q. In the flour case you merely mentioned someone? A. That is right.

Q. Here you said that Buchalter said to you, "You will have money from New York, money from me, and money from there, and you will be O.K.," is that correct? A. That is right.

Q. Did you say that here? A. That is right.

5140

Max Rubin--For People--Cross

Q. On the same subject, were you asked this question in the flour case (page 973):

"Q. Did you have a conversation with him?

"Mr. Grunnet: I want the whole story, the whole story.

5141

"A. Yes, he wanted me to go to New Orleans, keep myself occupied, that is going to be the thing for me to keep away, there was a friend out there running slot machines." Was that the answer you made to the question?

Mr. Turkus: Just a minute. It has not been read what happened at that point, that Mr. Kleinman objected. I submit, your Honor, this is—

Mr. Barshay: Do you want me to read objections?

Mr. Turkus: Yes, certainly. Objections lots of times and answers by witnesses.

5142

Mr. Barshay: I am now reading Mr. Kleinman's objection to that, Judge, as your Honor ruled.

Mr. Turkus: Your Honor, there was a question. The question was read and an answer was given. The context of the record shows clearly that at that point in the answer, Lepke's then lawyer got up and made an objection that it could in no wise be in furtherance of what we have in the indictment, referring to that indictment, and then there was discussion between the District Attorney, the defense lawyer, the Court and the witness. That should be told to this jury so they will

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5143

understand when that answer was terminated and under what circumstances.

The Court: I thought, Mr. Barshay, you said you were going to read it?

Mr. Barshay: The Court overruled Mr. Kleinman's objection. If you want me to read it, I will read it.

The Court: I thought you said you were going to read it. I did not rule at all, that I know of.

Mr. Barshay: I am going to read it, knowing very well if I do not, Mr. Turkus has a right to read anything.

5144

(Mr. Barshay reads as follows:)

"Mr. Kleinman: I submit, your Honor, this answer, what I tried to anticipate, this conversation could in nowise be in furtherance of what we have in the indictment.

"Mr. Grunet: It certainly is, because he said something about keeping him occupied, and it has a direct bearing on it.

"The Court: I do not know whether Mr. Kleinman understands. I do not understand whether this is the witness's own conclusion or whether it is something the defendant Buchalter said.

5145

"The Witness: He said to me.

"The Court: I will overrule the objection.

"Mr. Kleinman: Exception.

"Q. What did he say to you?

"Mr. Price: Exception.

5146

Max Rubin—For People—Cross

"A. He said to me he has a friend out there who is running the slot machines.

"Q. Where? A. In New Orleans, and that I should break myself in to fix the machines and keep myself occupied.

"Q. Yes, go on. A. And I went to New Orleans." Those questions were asked? A. That is right.

5147

Q. Those statements were made, and those objections, to your knowledge, were made by Mr. Kleinman, and the Court acted as I read? A. That is right.

Q. You did not mention the name of Frank Costello there; yes or no? A. I did not.

Q. You did not say a single word in the flour case, "You will have money from New York, money from me, and money from there, and you will be O.K.," did you? A. I did not.

Q. You testified here that Buchalter told you to tell Berger in some way where you are stopping and under what name? A. That is right.

5148

Q. Buchalter was sending you to a friend of his, wasn't he? A. That is right.

Q. Buchalter gave you the name and the address of that friend? A. No.

Q. Well, he told you where you could find him? A. He told me after— No, he did not—he told me after I got to a hotel I should let Paul Berger know and then he would send—he would get in touch with these people.

Q. You told us here that he told you to go to a friend in New Orleans by the name of Costello?

Mr. Turkus: That is objectionable.

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5149

That is not the testimony in the record. The testimony is precisely as Mr. Rubin has just stated it.

The Court: Sustained.

Mr. Barshay: Exception, sir.

Q. You testified that when you came back from New Orleans you went to your home and you sent for Paul Berger? A. I telephoned him that I was home.

Q. Whatever way you did it? A. I did not send for him. 5150

Q. In the flour case, when you gave testimony, you knew Paul Berger's name, did you not? A. Very well.

Q. You knew he was around? A. That is right.

Q. You knew he was out on bail from Dewey? A. That is right.

Q. You knew he was available? A. That is right.

Q. At page 975 of the flour case, were you asked these questions: "Q. How soon after your return did you see the defendant Buchalter? A. The same day." Were you asked that question and did you give that answer? A. That is right. 5151

Q. "Q. Where? A. A fellow came to my house." Did you make that answer to that question? A. That is right.

Mr. Turkus: Then Mr. Kleinman objected.

Mr. Barshay: All right, I will read the objection.

5152

Max Rubin—For People—Cross

Mr. Turkus: You read it so that this jury gets the whole context.

Mr. Barshay: Am I responsible for the form of Kleinman's objection, Mr. Turkus?

Mr. Turkus: No, but you have got to take the answer with it.

Mr. Barshay: It was overruled.

Mr. Turkus: "A fellow came up to my house—"

"Mr. Kleinman: The question is where."

5153

The Court: Was he asked any name?

Mr. Turkus: No, he was not.

The Court: Then what does it amount to?

Mr. Turkus: That is what I do not understand.

Mr. Barshay: You will understand if you will be patient, not interrupt me, Mr. Turkus. I have a right to read, your Honor, the questions and answers as I have them without the objections, but if the Court wants me to read the objections which were overruled, I will do so.

5154

The Court: The jury is entitled to a fair presentation of every element there. If a little piece of it is put in now which creates an impression in the minds of the jury, what good is it when maybe Monday the District Attorney comes back and asks the rest of it? The jury by that time cannot piece it together.

Mr. Barshay: I take objection to the Court's observation.

The Court: The time for the jury to get it is right now.

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5155

Mr. Barshay: I hope the Court does not intend to convey to the jury the impression that by my not reading Mr. Kleinman's objection I intended to change the context of any answer.

Mr. Turkus: No.

The Court: I do not know what your purpose is.

Mr. Barshay: It take an exception to that, sir.

The Court: I am not committing myself one way or the other on that point.

5156

Q. "Q. How soon after your return did you see the defendant Buchalter? A. The same day.

"Q. Where? A. A fellow came up to my house—" Interrupting.

Mr. Turkus: Will you put the dash in?

Mr. Barshay: Wait a minute, please. I am doing it just that way.

Mr. Turkus: You are not putting the dash in.

Mr. Barshay: I said, "Interrupting".

5157

Q. "Q. Where? A. A fellow came up to my house" Dash.

"Mr. Kleinman: The question is where.

"Q. Where did you see him? A. On Amsterdam Avenue.

Q. Did you say somebody came to your house? A. Somebody came to my house."

Now, I ask you, you knew Paul Berger's name at that time? A. I did.

5158

Max Rubin—For People—Cross

Q. You knew he was around and available?

A. That is right.

Q. You did not mention the name of Paul Berger in the flour case, did you? A. I did not.

Q. That is all I wanted. You say Paul Berger was an intimate of this defendant Buchalter then? A. He was.

Q. He was entrusted with messages from him to you? A. That is right.

5159

Q. He was entrusted with your whereabouts? A. That is right.

Q. But when Buchalter and you spoke, Berger was in the automobile, and you and Buchalter spoke under an awning? A. That is right.

Q. In the absence of Berger? A. That is right.

Q. Did you ask Berger to stay away? A. No.

Q. Did Buchalter ask Berger to stay away? A. No.

Q. Did anybody tell Berger to stay away? A. I don't know.

5160

Q. You all three rode in the car? A. We did.

Q. You wanted to speak to Buchalter all alone, did you? A. I did not want to speak to Buchalter all alone. I got a summons to meet him, and when the king directs, you go.

Mr. Barshay: I move to strike out the answer, your Honor.

The Court: Leave out, "the king". You mean from Buchalter?

The Witness: Of course.

The Court: Berger was the messenger!

Max Rubin—For People—Cross

5161

The Witness: He told me that Lepke wants to see me and I should go down with him, and I got dressed and I went down.

Q. Berger was not permitted to partake in the conversation?

Mr. Turkus: That is objectionable?

The Court: Sustained.

Mr. Barshay: Exception.

5162

Q. While you were away to these various places, exclusive of the time that you mentioned a man from Michigan, you were all alone? A. Except when I was in Teitelbaum's store. I was with this here Sam Teitelbaum, but when I was in New Orleans, and in Atlantic City I was with Danny Fields.

Q. Mr. Rubin, will you tell us, you were all alone when you went to Salt Lake City, on the way out? A. Yes.

Q. You were all alone when you came back from Salt Lake City? A. Yes.

5163

Q. You were all alone when you went to New Orleans? A. Yes.

Q. You were all alone when you came back from there? A. That is right.

Q. You knew then that Dewey was still offering protection to witnesses, did you not, who testified for him; did you? A. I did not know that. I was away. Whenever I came back, I do not know if I remember him saying it, but I suppose that is what he said.

5164

Max Rubin—For People—Cross

The Court: Never mind what you suppose. You were only asked as to whether or not you knew it at the time.

Q. You did not go to Mr. Dewey's office, did you? A. When?

Q. Between those trips when you came back; did you? A. No, I did not.

Q. Buchalter did not send a man to guard you, did he? A. He did not.

5165

Q. In Washington you met Buchalter in a hotel, is that correct? A. That is right.

Q. You took him in the bath room, did you not, you said here? A. That is right.

Q. And you had a talk with him? A. That is right.

Q. In the flour case you were asked (pages 978 and 979):

"Q. Did you have a talk with him?"

I am now speaking with respect to the defendant Buchalter in Washington (folios 2933 and 2934). The first question, to show continuity:

5166

"Q. Before you returned to New York did you see the defendant Buchalter? A. I did.

"Q. Where? A. In Washington.

"Q. The District of Columbia? A. That is right.

"Q. And where did you see him there? A. In a hotel.

"Q. Did you have a talk with him? A. I did.

"Q. How long were you in Washington, by the way? A. Just overnight, that's all.

"Q. What conversation did you have with the defendant Buchalter in Washington?

Max Rubin—For People—Cress

5167

"Mr. Price: Objected to.

"Mr. Kleinman: Before that, may I have a time fixed?

"Q. When was that? A. I would say approximately, I am not so sure, but I will make you a fair guess, March 9th."

Were you asked those questions and did you make those answers as I read them? A. I did.

Q. "Q. How long before you came back to New York? A. The next day.

5168

"Q. You returned to New York the next day? A. That is right." A. That is right.

Q. Were you asked this question: "Q. What conversation did you have with the defendant Buchalter in Washington?

"Mr. Price: Objected to.

"Mr. Kleinman: Same objection for Buchalter.

"The Court: Mr. District Attorney, do you mind coming up here for a moment and telling me what the purpose of this conversation is?

5169

"(Discussion at the bench between the Court and Mr. Gramet not within the hearing of the jury.)

"The Court: What is that last question.

"(Record repeated.)

"The Court: Objection overruled. Received only as to Buchalter.

"Mr. Price: Exception.

"Mr. Kleinman: Exception as to Buchalter.

"A. He told me not to come to New York."

5170

Max Rubin—For People—Cross

Were those question asked— Wait a minute, Mr. Turkus, I am not finished. —and did you make those answers? A. I did.

Q. "Q. Did he say anything else? A. I told him I can't stay away, I have been away seven weeks now, I have not seen my family, all along these lines, and the other fellow that was with me said—

5171

"The Court: Never mind that.

"Mr. Grumet: Never mind what he said, unless your Honor feels it is admissible. Never mind what the other fellow said.

5172

"Q. What did you say to him? A. I told him I was going, that he has nothing to worry about me. Whatever would transpire with me would not affect him at all, and then he said to me, 'Remember, if you get in any trouble, don't come to me.' I asked him what he meant. He said, 'Well, if you need a lawyer for bail bond, something like that, don't expect me to foot any bills.' " Those are the answers you made in the flour case, as I recall them, did you not? A. I did.

Q. Did not say one word about paying your income tax, did you? A. Did he say?

Q. You did not? A. I may have.

Q. I read them. A. I did not say it there perhaps.

Q. You did not say one word about taking Buchalter in any bathroom, did you? A. I did take him in. I did not say it there.

Q. That is all I am asking you, Mr. Rubin, won't you please cooperate to some extent? A. O. K., I am very anxious to.

Q. Now, you spoke about the penalty that you were willing to pay: is that correct? A. That is right.

Q. (Page 1261) You said that you were willing to pay substantially any penalty of any kind, is that correct? A. That is right.

Q. Again I say— A. Did I say from any penalty of any kind?

Q. Yes. Do you want to read it, Mr. Rubin?
A. I just want to know.

5174

Mr. Barshay: Am I reading correctly, Mr. Turkus?

Mr. Turkus: I have not seen it yet.

Mr. Barshay: (Page 1261, beginning at the bottom of 1260) "Q. What was said in the bathroom? A. I told him he had nothing to worry about, I was coming back to New York, if I got into trouble he had nothing to worry about; if I had to pay any penalty of any kind I was willing to pay it; but as far as he was concerned he had nothing to worry about."

5175

Q. The only crimes that you say you participated in were in the Borough of Manhattan, City of New York; isn't that so?

Mr. Turkus: I object to it. That is for the jury to determine on the basis of what he stated; further, that it is repetitions.

The Court: I am trying to figure out what this means. Let it in.

Q. Will you answer the question? A. I had in

5176

Max Rubin—For People—Cross

mind to pay whatever penalty for any crime that I thought I had committed.

Q. That was in the Borough of Manhattan, City of New York, wasn't it? A. I had in mind the Borough of Manhattan and City of New York.

Q. Because there was no penalty that you could pay for anything that you did in Brooklyn; is that so? A. I felt that way.

Q. That is true? A. I felt that way.

5177

Q. So that you were fleeing from the places where you could be punished, and only from those places, isn't that so, at the direction of the defendant Buchalter? A. I did not know from where I could be punished. I did not know that.

Q. Well, you knew as a man of above average intelligence that you could not be punished for something you did not do? A. I don't know that.

Q. You could not be punished for anything you did in Brooklyn, could you? A. I don't know that. I don't know.

5178

Q. I took your own word, sir, that you did absolutely nothing wrong in the Borough of Brooklyn. A. That goes into a long question of District Attorneys, their honesty, and a million other things. I do not want to go into that question. That can mean a whole lot.

Q. You were afraid of being framed by some District Attorney? A. Positively, positively.

Mr. Barshay: Judge, may we recess now? I have about four more pages, which will require considerable time.

The Court: How much time do you estimate?

Mr. Barshay: From an hour to two hours, your Honor.

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The Court: May I suggest this afternoon that inasmuch as it is raining and the jury will not be able to take a walk and will be irked by being indoors so much, you keep occupied during the next twenty-three minutes and recess at half past four?

Mr. Cuff: Judge, relying upon your statement, I made an important appointment for 4:30.

The Court: If it is not agreeable, the Court has to go along with the arrangement promised counsel.

5180

Mr. Rosenthal: I have an appointment with Judge Conway of the Court of Appeals at 4:30.

The Court: Members of the jury, please do not discuss the case; let no one talk to you about it; keep your minds open, and remember all of the other admonitions given heretofore.

First let the witness go out.

Recess to ten o'clock tomorrow morning, but everybody remain seated.

Now the jury may go out the other door.

5181

The defendants are remanded.

(Whereupon an adjournment was taken to November 7, 1941, at 10:00 A. M.)

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Max Rubin--For People--Cross

Brooklyn, N. Y., November 7, 1941.

TRIAL RESUMED

MAX RUBIN, a witness in behalf of The People, resumed the stand and testified further as follows:

Cross examination by Mr. Barshay (continued):

5183

Q. Yesterday I asked you whether or not you were on the payroll of the Garfield. I want to withdraw that.

Were you getting from Mr. Cooper, personally, \$50 a month? A. No, sir.

Q. Or from anybody connected with the Garfield, personally? A. No, sir.

Q. At any time did you get any compensation from the Garfield in any way whatever? A. He bought a meal.

Q. I did not mean that. A. No, sir.

5184

Q. Now, on page 1242 of this case, you testified substantially to a conversation you had with the defendant Buchalter after you came back from Salt Lake City. Do you recall that? A. Yes, sir.

Q. Substantially, at page 1242, you said, among other things, that the defendant Buchalter said to you, "Things are very hot. Brooklyn is not straightened out. Investigations are getting very serious." Do you recall that? A. Yes, sir.

Q. At the bottom of page 971, Mr. Turkus,—in the flour case, were you asked this question: "Q. Now, you testified that you returned from Salt Lake City? A. That is right." A. Yes, sir.

Q. At page 973: "Q. How long did you remain in New York then? A. Until the middle of December." Do you remember that? A. About that time.

Q. Did you answer the question as I read it? A. Yes, sir.

Q. "Q. Did you go away again? A. Yes, I went away again." A. Yes, sir.

Q. "Q. Did you have a talk with Buchalter about it? A. I did." A. Yes, sir.

Q. "Q. What was said?

5186

"Mr. Price: Same objection, on the same ground.

"Mr. Kleinman: May we have the time fixed?

"The Court: Objection is overruled with respect to Buchalter; I will take it only as to Buchalter and not as against the other defendants. Now, the time.

"The Witness: About the middle of December, your Honor, 1936, when I came back from Salt Lake City and I met him. He asked me, 'Why did you come back? Why do you always come back to New York? Have you got something in the back of your head?' And I said, 'No, Louis, why should I have anything in the back of my head? I have always been a friend of yours; you have always been a friend of mine; why should I have anything in the back of my head?' And that continued a little while. I believe he went in and had something to eat and he told me to stay in an East Side hotel, and see what he could do for me."

5187

5188

Max Rabin—For People—Cross

Did you make those answers to those questions, as I read them? A. Yes, sir, I did.

Q. At page 1261, you testified in this case, substantially, that the defendant said to you, "If you get in any trouble in New York, don't come to me." You said that? A. Yes, sir.

Q. Now, on other occasions, in consultations he had with you, you specifically used the word "Brooklyn," didn't you? A. Here?

5189

Mr. Turkus: I object unless the time is fixed.

The Court: In connection with which return?

Mr. Barshay: With respect to all returns he made when he had a talk with Buchalter and Buchalter said, "Brooklyn is not straightened out," and that "Brooklyn is very hot." That is the only conversation I have reference to.

The Court: "Brooklyn is still too hot?"

5190

Mr. Barshay: Yes, in all conversations he specifically used the word "Brooklyn," whereas in this conversation he used the words "in New York."

The Witness: That is right. You are speaking about the one in Washington?

The Court: You are speaking about a different matter than the return from Salt Lake City?

Mr. Barshay: This conversation he is alleged to have had in Washington.

The Witness: In the hotel, yes, sir.

The Court: Is that where he said, "If you get in any trouble in New York, such

Max Rubin—For People—Cross

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as any lawyer and bail bond, don't come to me"?

Mr. Barshay: That is correct.

The Witness: That is right.

By Mr. Barshay:

Q. You stopped at the Bossert Hotel? A. Yes.

Q. That is very close to the District Attorney's office, you know that? A. I did not know it at that time.

5192

Q. You know it now? A. Yes, sir.

Q. You stopped on Flatbush Avenue? A. That is right.

Q. That is not very far from Police Headquarters? A. I did not know it then.

Q. Do you know it now? A. No, sir.

Q. Flatbush, near where? A. 532 is the number.

Q. Do you know where near? A. Clinton Place—

Mr. Turkus: Lincoln Place.

5193

The Witness: Lincoln Place, yes, sir.

Q. That is not far from Washington Avenue and the Parkway, where the Homicide Bureau sits? A. I don't know. I am not too well acquainted in Brooklyn.

Q. Is it near Ebbets Field? A. Yes, sir, I believe it is, but I was not there.

Q. When you finally decided to surrender, you went to Maguire's office, and he took you to Dewey's office? A. No, sir, he went himself.

5194

Max Rubin—For People—Cross

Q. He made arrangements for you? A. Yes, sir.

Q. You knew he was going to Dewey's office? A. I sent him there.

Q. You did not send him to Brooklyn, did you? A. No, sir.

Q. You never went to Brooklyn? A. No, sir.

Q. You came back from Washington sometime in March of 1937? A. The early part.

5195

Q. The last time you saw the defendant Buchalter was in Washington? A. That is right.

Q. You were in New York until Mr. Maguire made arrangements for you to go to the Dewey office? A. Yes, sir.

Q. Sometime in the latter part of September, 1937? A. I think it was in August.

Q. Between March and September you personally had never seen or spoken to the defendant Buchalter? A. No, sir.

Q. But before that time, while— Question withdrawn.

5196

Q. You know that Buchalter himself has never left the City of New York during the latter part of 1935, the year of 1936, and the early part of 1937, did you know that? A. I think Paul Berger told me he had left.

Q. From the time you were in New York, of course, you say you saw him? A. Saw who? Berger?

Q. Yes. A. You are talking after March 5th, after the Washington trip?

Q. Before the Washington trip. A. Whenever I saw him, whenever I came back.

Q. To your knowledge he was in the City of New York all the time until March of 1937? A. Yes, sir.

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5197

Mr. Turkus: May we have that clear?
I object; all that knowledge is hearsay
as to what somebody said to him.

By the Court:

Q. You mean so far as you know; is that what you mean? A. Yes, sir, as far as I know.

Q. You don't know where he was when you were away? A. No, sir, Mr. Barshay said only those times when I came in did I find Mr. Buchalter here each time I came in, and I said yes.

5198

By Mr. Barshay:

Q. You remember testifying in the flour case that Buchalter said he was staying in New York? A. If it is there I said it.

Q. You came home on the occasions that you did, and you did not speak to your wife? A. No, sir, not often.

Q. Not often, did you say—

5199

Mr. Turkus: I object unless the time is fixed, what occasion.

Q. Every occasion, Rubin, you came home, did you speak to your wife? Do you recall that? A. I spoke to her a few times.

Q. In those few times did she ever tell you that the Brooklyn District Attorney's office or the Police Department of the City of New York were looking for you with respect to a visit to the Kings County authorities? A. Never.

Q. So you can safely say now that, to your

5200

Max Rubin—For People—Cross

own personal knowledge, no one, either at the office, at your home, or in the places of business you customarily visited, was there anybody looking for you from the Brooklyn District Attorney's office?

Mr. Turkus: He cannot have knowledge; I object; all he can say is whether or not he heard it.

5201

Q. Did anyone ever tell you that? A. No, sir.

Q. It is a fact, isn't it, that there was a visitor at your home from Dewey's office? A. That is right, but I was only told of it.

Q. Your wife told you that? A. Yes, sir.

By the Court:

Q. From where? A. Dewey's office.

Q. Is that before or after you were arrested?

A. Before I surrendered.

Q. Was that before you went to see Mr. Maguire? A. Much before that.

5202

By Mr. Barsbay:

Q. That is to say, while you were in transit?

A. While I was away.

Q. When you came to the office of the union for the \$20 differential you testified about, did anyone tell you there that anybody from the Brooklyn District Attorney's office or the Police Department had left word for you? A. Never.

Q. Did you communicate with a brother-in-law of yours while you were away? A. I did not.

Q. Did he communicate with you? A. No, sir.

Q. May I know your brother-in-law's name?

A. Jacob Kaminez.

Q. What business is he in? A. He is an office man, clerk in the Greater New York Expressmen's Association.

Q. That is an association you visited from time to time? A. Yes, sir.

Q. The same association you had been testifying about? A. Yes, sir, that is right.

Q. You knew Inspector McDermott before you spoke to him in 1940, in March? A. 1932, I believe.

5204

Q. You knew him, whether you saw him or not, you knew who he was? A. Yes, sir.

Q. He knew you, to your knowledge? He did not.

Q. You mean that you knew him by reputation? A. No, sir.

Q. You knew him by speaking to him in some fashion? A. Yes, sir.

Q. Your testimony in the flour case was before Inspector McDermott spoke to you in 1940? A. That is right.

5205

Q. Your testimony in the flour case had already been completed when Inspector McDermott spoke to you? A. Yes, sir, about a month later.

Q. He took you to the District Attorney's office, or I will say, in the Bossert Hotel? A. About a week later.

Mr. Barshay: May we have the date of the defendant's indictment, your Honor?

The Court: May 28, 1940.

Mr. Barshay: Is it conceded, instead of reading it into evidence?

5206

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Mr. Turkus: When the Court makes a statement on the record, that is enough.

Mr. Barshay: I will read it into evidence. Now, we have it as May 28, 1940.

Q. You did not testify in the Grand Jury that found that indictment, did you? A. I went to the Grand Jury, I said, about a month ago, or maybe less.

5207

Q. While the jury was being chosen in this case, you testified before the Grand Jury? A. No, sir, before that.

Q. We started to pick this jury September 15, 1941; can you recall when you testified before the Grand Jury? A. I think it was during that time—I think so, but you can ask them and get the exact date.

Mr. Barshay: If the District Attorney will accommodate me I can have the exact date.

5208

Mr. Turkus: September 25, 1941, is the exact date.

The Court: That is over a year after this indictment.

Mr. Barshay: Your Honor, may we have for the record the number of times this case was upon the trial calendar, and then adjourned from time to time to September 15th?

The Court: I will not take time with that now. You may put it on the record later. The clerk's minutes show everything that is required in that respect.

Mr. Barshay: I wanted to get the dates

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5209

before this jury, but if you will allow me to do it later, that will be all right.

The Court: For the information of the jury here?

Mr. Barshay: I did not say that, but that I may have something to say about the order of events. Unless I lay the foundation, I will not be able to make comments about it.

The Court: The procedural record is the Clerk's minutes. The Court should not be expected to convey that information. The Clerk's minutes are open to counsel for inspection.

5210

Q. Were you subpoenaed as a witness or asked to be a witness in this court between May 9, 1941, and May 16, 1941? A. I received no subpoena of any kind.

Q. Did you receive a request, or did you receive instructions to be here? A. I simply got a call from Inspector McDermott to meet Judge O'Dwyer at the Bossert.

5211

Q. I am not talking about that. I am talking about before the testimony in the Grand Jury, a year later. A. I got no subpoena.

Q. Were you in court May 9, 1941? A. No.

Q. Were you asked to come to court right after that? A. No.

Q. On May 16, 1941, were you asked to come? A. In court?

Q. Yes. A. No, sir, only on that particular day.

Q. June 15, 1941? A. No, sir.

5212

Max Rubin—For People—Cross

Q. Were you asked to come to court that day?

A. No, sir.

The Court: May I ask what the purpose of this is?

Mr. Turkus: There was no case on that day.

The Court: It makes no difference whether there was or not.

Mr. Barshay: I know that too.

5213

The Court: And you will get the jury speculating as to what it is all about, when it is none of their affair.

Mr. Barshay: I am not using it for any other purpose than the one I said. I must lay a foundation if I am going to talk about it in summation.

The Court: The Court is not going to allow you to discuss matters outside of the case, in the presence of the jury.

Mr. Barshay: I don't intend to do it.

There is only one more date. If you say I shall stop, I will stop.

5214

The Court: I don't know what it has to do with the case, except to confuse.

Mr. Barshay: I except.

Q. When did you see Paul Berger last? A. In the Grand Jury, in the Bronx.

Q. Just give me the date. A. I don't know the date.

Q. Well, about. A. About three months ago, I imagine, something like that.

Q. Did you talk to Paul Berger about this case? A. They will not let you do that, no, sir.

Q. Just answer yes or no. A. No, sir.

Q. Is that the very last time you saw Paul Berger? A. The very, very last.

Q. When did you see Paul Berger before that three-months period? A. When he was picked up and brought to the District Attorney's office.

Q. When Berger was picked up? A. Yes, sir. I was told to be there and I came there.

Q. Do you know how long ago that was? A. It was before that Bronx meeting.

Q. In the summer of 1941? A. I think it was.

Q. Did you speak to Berger? A. I just went in and said one thing only.

Q. Did you speak to him? A. I just made one statement.

Q. Did you speak to him? A. Yes, sir, I made a statement, that is, a statement to him.

Q. When you made a statement in the man's presence and spoke to him, did you speak directly to him? A. Yes, sir.

Q. And did he answer? A. He did not.

Q. How long did you and he face each other then? A. Just as long as it took to make that one statement.

Q. Was it a long one? A. About 15 words.

Q. When did you see Berger before that? A. At his place of business, I believe.

Q. How long before the meeting you just described? A. I think in 1938.

Q. Then between 1938 to the time you described in the District Attorney's office, sometime this summer, you had not seen him or spoken to him? A. I don't think so; I cannot remember; that last meeting—

Q. Have you told us all the times you have seen and spoken to Berger? A. I think so.

5218

Max Rubin--For People--Cross

Q. When did you see Allie Tannenbaum last?

A. Also at this Bronx meeting.

Q. That was about three months ago? A. Yes, sir.

Q. You talked to him about the case? A. No, sir, he was not in the room.

Q. Did you see him other than that? A. Yes, sir.

5219

Q. Where? A. I stopped at the Half Moon Hotel during the summer under custody, and I used to see him from the window or passing in the hall. His wife was on the same floor I was on.

Q. How long did you stay at the hotel? A. During the summer.

Q. Not at your own expense? A. No, sir.

Q. During that time how many times did you see Tannenbaum? A. I saw him a half a dozen times.

Q. Did you speak to him? A. Just "hello" and passed by.

Q. That is all? A. That is all.

5220

Q. Did you speak to his wife? A. I did not know his wife.

Q. You were not a material witness, you were not held as a material witness at the Half Moon Hotel, were you?

Mr. Turkus: I object to the form of the question.

Mr. Barshay: Question withdrawn.

Mr. Turkus: He will state his status.

Q. Were you there pursuant to an order of any court, to your knowledge? A. No, sir.

Max Rubin—For People—Cross

5221

Q. Before that, you lived at your home? A. I did.

Q. All of the time? A. All the time.

Q. When did you leave the hotel and go back to your home? A. In September.

Q. You have been at your home ever since? A. Yes, sir.

Q. That is September, 1941? A. Yes, sir.

Q. When did you see Mrs. Rosen last? A. I saw her at the hotel but I never spoke to her.

5222

Q. Did she, to your knowledge, live at the hotel?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant; that was discussed with Mrs. Rosen when she was on the stand.

Mr. Barshay: May we have an objection without a speech, your Honor?

The Court: Objection overruled.

A. Yes, sir. Mr. Barshay, before I went to the Half Moon Hotel, I took a place in Sea Gate, on Atlantic Avenue, and I paid a deposit of \$100, and when I reported—

5223

Q. (interrupting) That was your own money?

A. Yes, sir. And when I reported to the District Attorney what I had done and I explained to them some of the people I had met there, they advised me to come to the Half Moon. I want to get the record clear.

Q. Did your family live with you at the Half Moon Hotel? A. My wife. I sent my boy to camp.

5224

Max Rubin—For People—Cross

Q. When you went to the candy store with Feinberg that day, you said it was pursuant to a call by Sylvia Rosen? A. That is what Feinberg told me.

Q. Had you spoken to Sylvia Rosen since? A. No, sir.

Q. Had you spoken to her about that time, about the time you visited the candy store? A. No, sir, I have not seen her since she—

5225

Q. (interrupting) You have not seen her at all or communicated with her? A. No, sir.

Q. From the time you came to the union office, in transit, coming back from the various places you were, had you seen Feinberg? A. Yes, sir, he had those \$20 accumulations.

Q. In other words, to your knowledge, he was attending to union affairs all the time? A. There was a committee that was appointed.

Q. He was one of them? A. Yes, sir.

5226

Q. The union did stop your pay sometime in 1937, in the fall, didn't they—yes or no? Can you answer the question that way? A. You are putting it very unfairly.

Q. Was there a time when the union stopped your pay for even one day? A. I was— You are putting the question very unfairly.

Q. If you can answer the question yes, say so, if you cannot, tell me you cannot. A. I think they did stop it.

Q. And then you were reinstated? A. There was no process of reinstatement. I simply got it again.

Q. Until 1939? A. Yes, sir.

Q. Were you discharged from the union in 1939—yes or no? A. I was not discharged.

Q. Did you resign? A. I did.

Q. At your own suggestion? A. I had nothing else to do.

Q. Did they ask you to resign? A. They did not.

Q. Do you recall October 31, 1938, meeting Danny Fields and Paul Berger at 5th Avenue and 17th Street? A. October 31st?

Q. 1938. A. Tell me what it is about, and maybe I can remember.

Q. Did you give them some money, both Fields and Berger? A. I did not give them any money, no, sir.

5228

Q. Did you transfer to them on behalf of anyone else the sum of \$400? A. I did not, no, sir; I can tell you what I did do.

Q. You don't mind answering my question? A. I took them to a certain place to get \$400. I am trying to help you.

Q. Did you tell Paul Berger and Danny Fields then you could put them on the union payroll? A. There was no union payroll; it was an association.

Q. Did you tell them you could put them on the association payroll? A. Danny, yes; I spoke to the association and I got Danny a job at \$56 a week as association manager.

5229

Q. Which association? A. The Greater New York Tailors Expressmens Association.

Q. Was that in 1938? A. That is right.

Q. Did you put Berger on the same payroll? A. No, sir, absolutely not.

Q. Did you give them \$400 to be divided? A. I did not give them anything.

Q. Not your own, but the association's money? A. I did not give them a cent. Ike Brown gave it to them.

5230

Max Rubin—For People—Cross

Q. Was it in your presence? A. Yes, sir.

Q. That is the same Paul Berger and Danny Fields that you have been testifying about? A. Yes, sir, they told me they were broke and needed the money.

Q. You made that arrangement for them? A. I was anxious to help them. I helped lots of people.

Q. Did you get any part of that \$400 from Danny Fields or Paul Berger? A. Of course not.

5231

Q. How long were they on the association payroll to your knowledge after this arrangement?

A. I said— There was not "they" on; it was only Danny Fields on; he was only on a week or two.

Q. Did he get off? A. He did not get off.

Q. They put him off? A. They did not put him off; he was took off.

Q. By the District Attorney's office of Manhattan? A. Oh, no, sir.

Q. Did Mr. Gurfen speak to you about that situation, do you recall?

Mr. Turkus: I object. That has nothing to do with the Rosen murder case.

Mr. Barshay: I object to Mr. Turkus making an objection in that form. If he has a legal objection, I wish he would make it.

Mr. Turkus: That is a very legal objection.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Did you hand any more money over for the association to Danny Fields, other than the money you described? A. I did not hand that over.

Q. Did you make arrangements for any other moneys to be paid to Danny Fields other than you described? A. No, sir, he just got a check; he got a weekly payroll check from the association, that is all.

Mr. Talley: In view of the testimony of this witness, I say he has testified to exactly nothing so far as the defendant Weiss is concerned, or which tends to connect the defendant Weiss with the matter we are now engaged in trying. For that reason it would be useless to take up the time of the Court and the jury if I were to cross-examine this witness.

5234

In this connection, at this time, I move that the entire testimony of this witness, in so far as it affects the defendant Weiss, be stricken from the record and the jury instructed now to disregard it,—in so far as the defendant Weiss is concerned.

The Court: Is there a similar motion by the defendant Capone?

5235

Mr. Rosenthal: My motion is similar in effect, but it goes further than that, because of the admission of this testimony and because of the previous motions made to your Honor respecting the defendant whom I represent. My additional motion is on the ground of prejudice to my client, and I ask for a mistrial.

Mr. Talley: I join in that motion.

The Court: As it is the policy of the Court to give a reason for deciding, the following will be stated: Under the law whereby several defendants are tried to-

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Max Rubin—For People—Cross

gether on the same indictment, the evidence does not have to apply to all in order to be received; it may apply to one only. That entitles it to be received. The Court may or may not instruct the jury at the time of each item of testimony by the witness that, according to the record up to that time, it applies to only a defendant or defendants.

5237

The Court has followed the policy here of not giving such an instruction at the time for this reason: that the way the case is being tried it is impossible to know how this testimony may be hooked up against the defendants Weiss and Capone before the People's case is over. Therefore, it is possible that there may be, and it is possible that there may not be, a hook. The Court cannot give an instruction at this time except that, so far as the law is concerned, the evidence is applicable only to the defendant or defendants to whom it relates, and as to the others must be disregarded.

5238

When it comes to the charge of the Court, at the conclusion of the case, this will be amply dealt with. The Court will have an opportunity to fully study the entire record by that time and to formulate a charge which will be sufficient for the jury to understand.

The motions are denied.

Mr. Rosenthal: May I say this, so that my motion is made clear: I came here on behalf of the defendant Capone to try

Max Rubin—For People—Cross

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a case alleging that Rosen was killed and that he participated. I am in no wise prepared to cross-examine or examine this man, or anticipate that this man has told the truth about anything with respect to the other defendant, Buchalter, in court, in regard to some flour record or otherwise. All that testimony is in here and I am not prepared to meet it. Whether it is hooked up or is not hooked up—and I assume there is no such contention by the District Attorney that it is going to be hooked up, or that we are in any wise associated with the flour record or the flour trial in the form of competent legal proof in this proceeding. So that whether your Honor subsequently strikes it out or does not, and says to this jury that it does not in any wise affect the defendant Capone, nevertheless, in so far as his interest is concerned there has been brought into this case a considerable amount of prejudicial testimony before this jury that may or may not affect their determination, even though the Court may instruct the jury to disregard it.

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The Court: This comes under the statutory procedure ordered by the laws of the State of New York. As to the wisdom or unwisdom of that procedure, the Court has nothing to do. Counsel may assume the responsibility in the matter of a decision on cross-examination.

Mr. Rosenthal: In so far as a cross-examination of this man is concerned, he

5242

Max Rabin--For People--Cross

has mentioned that he has seen the defendant Capone twice in his life. I intend merely to question him on those two episodes which affect my defendant—not that it affects or tends to prove he is guilty of this crime, but the source of his knowledge, and that only, keeping in mind and reserving, if I may, my motion.

The Court: Judge Talley, do you intend to cross-examine?

5243

Mr. Talley: I do not, because, as I have stated, there is nothing affecting Weiss upon which I feel I should cross-examine him.

The Court: Very well, then Mr. Rosenthal may cross-examine.

Mr. Talley: I wish to note my exception to your Honor's ruling and your refusal to grant the motion.

The Court: Exception to Mr. Rosenthal, too.

5244

By Mr. Barsbay:

Q. I forgot one question: Other than the statement you made to McCarthy, referring to one of the Exhibits for identification by Mr. Turkus, in 1937, did you at any time make a statement to Mr. McCarthy—yes or no? A. No, sir.

Q. You mean that at no time did you talk to McCarthy when a stenographer was present? A. Only that one time.

Q. That is the only time? A. Yes, sir.

Max Rubin—For People—Cross

5245

Cross-examination by Mr. Rosenthal:

Q. Do you understand, Mr. Rubin, that my questions are directed solely as to the defendant Capone? A. I understand very well.

Q. If you do not understand any question I ask you, just make that fact known to me, and I will make it clear. Is that clear to you? A. Yes, sir.

Q. Now, you said that you saw the defendant Capone twice in your life prior to the time he came into this court-room; is that what you said on your direct? A. Twice or three times; I am not sure, maybe twice.

5246

Q. Let me get it straight. Do you recall what you said to this jury at the outset of your examination? A. Let it be twice if that is what it was.

Q. What is your recollection? A. Twice. I will go along with you.

Q. Is there any doubt whether it was twice or three times? A. No, sir, I will go along with you.

5247

Q. I don't want you to go along with me. I just want you to tell this jury in your own way, in answer to my questions, the things which you have said on direct examination in answer to Mr. Turkus's questions. Is that clear? I don't want any quarrel with you. A. I say twice or three times.

Q. The first time you say you saw this defendant was when and where? A. I can guess at the year, but I cannot tell you where.

Q. Give us a guess at the year you first saw

5248

Max Rabin—For People—Cross

this defendant. A. I say around 1933, purely a guess.

Q. Might it have been 1932?

Mr. Turkus: I object, if it is guessing.

5249

Mr. Rosenthal: I ask your Honor to direct Mr. Turkus that when he makes an objection now—and I consider this is legal—that your Honor direct him when he makes his objection on legal grounds, not to inject into it any reason which will give the witness an opportunity to gain knowledge of what the purpose of the cross-examination is. Further, I ask your Honor to direct Mr. Turkus that he refrain from now on, in his objections, from giving anything but the ground. He should legally say it is either irrelevant or immaterial to the issue, and say nothing about the “Rosen killing.” The jury will determine whether there is anything to do with the Rosen killing. I am asking for a direction to Mr. Turkus at this time.

5250

Mr. Turkus: That is an insulting remark, intended to bait the District Attorney into a discussion.

The Court: The Court recalls, in this case, several discussions have been indulged in from time to time by other lawyers than Mr. Turkus. All counsel are expected by the Court to make their objections in legal form. To object on the ground that the question calls for something that has nothing to do with the case is proper, legal ground of objection

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5251

and synonymous to suggesting "upon the ground that the subject-matter is irrelevant."

The objection is overruled.

Q. Do you remember the question?

The Court: (interrupting) In 1932, could it have been?

A. It could have been, yes, sir, but I guess 1933.

5252

By Mr. Rosenhal:

Q. Is it not a fact that only on direct examination when you were asked by Mr. Turkus, on page 1288:

"Q. With respect to Louis Capone, when is the first time you saw him, if you can recall?
A. I believe sometime in 1932 or '33."

Isn't that the answer you gave to Mr. Turkus?
A. Yes, sir, that is.

Q. At that time, when you answered Mr. Turkus, your knowledge was no better or worse than it is when you are speaking to me? A. I guessed then, too.

5253

Q. Is that correct? I want to get through with this. Is that correct? A. Yes, sir. I want to get through myself. I am sick of this.

Q. So you are not sure what year it was you saw the defendant? A. I place it around that period; I am not sure.

Q. Give me the place where you say you saw him. A. I cannot tell you.

5254

Max Rubin—For People—Cross

Q. You cannot give me any idea of the place, is that it? A. No, sir.

Q. Whether it was in Brooklyn or Manhattan? A. Manhattan.

Q. Then you have still an idea. A. I mean as far as the Borough. I can tell you that, and that is all.

Q. Can you give me any—have you any indication about any place whatsoever, any place at all, other than the fact you now say Manhattan?

5255

A. We stopped in quite a few places during that period.

Q. Yes or no. A. I cannot give you an answer as to a specific place, no sir.

Q. You were not introduced to him? A. No, sir.

Q. You did not speak to him? A. I think we did. I think there was some sort of a conversation.

Q. I don't want you to think. A. There was some conversation.

5256

Q. Didn't you say on direct examination you were not introduced and did not talk to him? A. I did not talk to him. It was in some sort of a conversation.

Q. (The Court) Did you participate in it? A. I don't believe so, but I heard.

Q. (The Court) It had nothing to do with this case? A. Not a thing, no, sir.

By Mr. Rosenthal:

Q. Then, can you please tell me, if you remember, how long he was within your sight or view in 1932 or 1933, or whatever year it may be? A. I cannot tell you that.

Q. It may have been a few seconds? A. It might have been longer.

Q. Or it might have been longer? A. Yes, sir.

Q. Then you next saw the defendant when?
A. In 1935, in the fall.

Q. At that time you were not introduced to him either? A. No, sir.

Q. At that time you did not talk to him or he did not talk to you? A. That is right.

Q. Can you give me any idea as to the length of time that ensued during which he was within your view on that particular occasion? A. Just to go in and out of a certain room.

5258

Q. A fleeting glance? A. Yes, sir.

Q. The next time you saw him was when you entered this court-room? A. Yes, sir.

Q. Had you been shown the defendant by anybody, either the police or the District Attorney, on any occasion outside of the court-room or inside the court-room before you ascended the chair? A. No, sir.

Q. So when the question was asked you by the District Attorney as to the occasion, or whether you had seen the defendant Capone any time, you were then gazing at Capone for the first time after you had seen him in this fleeting glance in 1935; is that right, and 1932 or '33?
A. Yes, sir.

5259

By the Court:

Q. Was it a fleeting glance? A. I saw him come in the room and out of the room in 1932 or '33.

5260

Max Rubin—For People—Redirect

Mr. Rosenthal: I object to your Honor's question; he has already testified he went in and out of the room and it was a fleeting glance, in response to my question.

The Court: As to whether it was a fleeting glance?

Mr. Rosenthal: He said yes.

By Mr. Rosenthal:

5261

Q. Is that correct, Mr. Rubin? A. When?

The Court: The objection is overruled.

Mr. Rosenthal: Exception.

By the Court:

Q. Was it a fleeting glance on each occasion?

A. Not on the first time, but on this particular time he went into a certain room and that is all.

Q. The second time was there any conversation? A. Not a word, no, sir.

5262

Redirect examination by Mr. Turkus:

Q. During the cross-examination by Lepke's counsel, he elicited from you that the bakery extortion racket was going on even after Mr. Dewey had been appointed prosecutor; do you remember that? A. That is right.

Q. In fairness to Mr. Dewey, it did not take him long to catch up with those defendants and convict them, did it?

Mr. Barshay: I object and I ask for the withdrawal of a juror and the declaration of a mistrial.

Max Rubin—For People—Recross

5263

The Court: Objection is sustained; motion is denied.

Mr. Barshay: Exception.

By Mr. Barshay:

Q. Before I saw you in court, did you ever talk to me in your life? A. No, sir.

Q. That is true? A. Yes, sir.

By Mr. Tailey:

5264

Q. Before this witness leaves the stand, may I have the record indicate that during the entire course of his testimony a uniformed court officer stood directly behind his chair, within a foot, in the back of it; that two uniformed—another uniformed court officer stood within a few feet from him at the end of the jury box—and that during the entire testimony there was always a detective with a badge exposed on the lapel of his coat, standing also at the end of the jury box?

5265

The Court: Well, the set-up is perfectly proper. The two uniformed court officers are here legally, and the Court refuses to conduct the court without proper discretion and place court officers where it sees fit. It is none of counsel's business, and the jury will disregard it.

Mr. Talley: I submit—

The Court: Do not interrupt. There is a detective against the exit door between the court-room and the public hallway.

5266

Mar Rubin—For People—Recross

Mr. Cuff: About two or three feet away from the jury box.

The Court: I will say he is almost in contact with it—behind the jury box—to one end; and that he is properly there. That door is going to be guarded at all times during this or any other trial this Court is engaged in. Now, the witness will be taken away.

5267

Mr. Talley: I also ask your Honor to remove the picture which stood behind the witness chair through the entire course of this trial. It is entirely unnecessary and was never once referred to by this witness, who has been on the stand three days. I don't think it belongs there.

The Court: Let us have the number of the exhibit.

Mr. Turkus: That is People's Exhibit 2 in evidence.

The Court: It is not prejudicial in any way, and the Court was unaware of its presence.

5268

This might create an impression on the record which, upon reading, would make it seem that the defendants were not having a fair trial. That is nonsense. Take the exhibit away—turn it the other way. The jury is not supposed to see exhibits, apparently. It is quite large, is on an easel, and requires a man to lift it.

Now the record is the way it should be as to accuracy and fairness.

Mr. Talley: Exception.

Edward C. Maguire—For People—Direct

5269

EDWARD C. MAGUIRE, residing at 122 East 42nd Street, in the Borough of Manhattan, City and State of New York, called as a witness in behalf of The People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Are you a member of the Bar of the State of New York? A. I am.

Q. How many years have you been engaged in the practice of your profession? A. I was admitted in 1922 in this Department.

5270

Q. By this Department, you mean the Second Judicial District? A. That is right.

Q. Are you likewise admitted to practice in the Supreme Court of the United States of America? A. I am.

Q. Are you entitled, and have you received permission to practice in the Eastern and Southern Districts of the Federal Court of the United States? A. Yes, sir.

Q. Have you been engaged, in all the years of your practice, actively in the practice of your profession as a lawyer? A. I have.

5271

Q. Have you specialized in the practice of the Labor Law? A. That is correct.

Q. In or about October of 1936, where were your law offices located? A. 122 East 42nd Street.

Q. In Manhattan? A. In Manhattan.

Q. Were you retained by Local 240 of the Clothing Drivers & Helpers Union of the Amalgamated as their counsel? A. I do not think it

5272

Edward C. Maguire—For People—Direct

was as of the Amalgamated; it was at that time the International Brotherhood of Teamsters.

Q. When was it you were retained as counsel?

A. In the fall of 1936.

Q. Do you remember meeting a man named Mr. Max Rubin sometime after that retainer?

A. Yes, sir.

Q. Had you known him prior to that time?

A. I have probably known him from the early part of 1936.

5273

Q. Now, subsequent to the retainer by Local 240, where was it you met Mr. Rubin, Mr. Max Rubin? A. Mr. Max Rubin saw me in my office, I dare say, several times after the retainer.

Q. Did Mr. Max Rubin in the fall of 1936 have a conversation with you at your law offices? A. Yes, sir.

Q. Subsequent to the conversation, Mr. Maguire, did Mr. Rubin return? A. Yes.

Q. Did he return in company with Louis Buchalter, sometimes known as Lepke? A. Yes, sir.

5274

Mr. Rosenthal: So as not to interrupt the continuity of whatever this witness may testify to, may I have the Court's permission to enter a general objection to all of this testimony upon the ground it is in no wise binding upon the defendant Capone? It will save the necessity of my getting up continually throughout the trial, and I will reserve my motion until the close to strike out, if it turns out that my objection is well founded.

The Court: That remains to be seen.

Edward C. Maguire—For People—Direct

5275

The Court will instruct the jury at the proper time in its charge.

Mr. Rosenthal: May I have a general objection at this time so that I do not have to get up again and object to each question?

The Court: Yes. Your objection now is overruled.

Mr. Rosenthal: Exception.

The Court: Gentlemen of the jury, when several people are tried together testimony must be accepted from witnesses only against such defendant or defendants as it applies to.

5276

Q. Now, at the time Mr. Rubin returned with Louis Buchalter, sometimes known as Lepke, had you known Mr. Lepke or Buchalter at that time? A. I had not.

Q. On this occasion, then, when Mr. Rubin brought Lepke up to your law offices, did Rubin introduce you to Lepke? A. He did, as Mr. Buchalter.

Q. What did Rubin say? A. In the presence of Buchalter, or Lepke, as he has been called in this trial, he asked me to repeat what I had said to Rubin a day or two before.

5277

Q. Did you do that? A. I did.

Q. What did you repeat or reiterate in the presence of Lepke? A. I told him—

Mr. Talley: This does not affect my client, and apparently will not. I object to the testimony upon the ground that it apparently is a disclosure or communica-

5278

Edward C. Maguire—For People—Direct

tion given to him by a client of his, which is improper and objectionable. Here he is going to repeat—and I am sure Mr. Maguire knows it as well as I do—he is about to repeat a conversation between him and Rubin, who was a representative or business agent—a direct representative of the union for which Mr. Maguire was counsel at the time. It is a confidential communication.

5279

Mr. Maguire: May I say this—

Mr. Turkus: You have something to say with regard to an instrument you secured before you came here to testify, as to some waiver of privilege from Rubin, in writing?

Mr. Maguire: Yes.

Q. Have you it with you? A. I haven't it just now.

5280

Mr. Turkus: I ask that this paper be marked for identification.

(Received and marked People's Exhibit Z-17 for identification.)

Mr. Maguire: With your Honor's permission, may I ask the District Attorney—there is a boy coming from my office, and it should be here any minute.

Q. Now look at People's Exhibit Z-17 for identification and tell us whether that is an exact copy of a waiver you received prior to testifying in this case. A. Yes, sir.

Edward C. Maguire—For People—Direct

5281

Q. So that, pursuant to the rules and ethics of the practice of law, you secured all the law requires before you took the witness stand? A. The privilege was his, not mine.

Q. You insisted on receiving such waiver before you would divulge or disclose the conversation? A. That is right.

Q. Now, at the time of the objection by Judge Talley, there was a pending question which was not answered; I will ask the stenographer to read it to you.

5282

(Pending question read by reporter.)

The Witness: I told him, I told both of them, that in my opinion any man who would become a fugitive while an investigation was pending, was foolish and extremely unwise; that if that man should be indicted while he was such a fugitive and thereafter caught and brought back, that the fact he had been a fugitive would be a very weighty matter against him. I also told them that Rubin, I understood, was a married man with a child and I said it was utterly ridiculous for any man with those responsibilities to go off as a fugitive indefinitely. I told them also this: That Rubin was a representative of a union, and that no union was going to stand for its representative being off in some unknown place, and that the membership of the union would naturally rise and oust him.

5283

Q. When you made that statement to Lepke and Rubin, in connection with the word "in-

5284

Edward C. Maguire—For People—Direct

vestigation," did you use it in the singular or plural?

Mr. Barshay: I object to that as leading. He has answered.

Mr. Turkus: Question withdrawn.

5285

Q. When you made that statement to Rubin and Lepke, did Lepke say something? A. In the early part of my statement to them he interrupted and said, "If witnesses are not available, investigations collapse."

Q. So the record may be clear, when you used that word, was that in the plural, was it "investigations"? A. Definitely plural.

Q. After you pointed out the inadvisability of fleeing during investigations, did Lepke say anything further? A. At the conclusion he said either, "I will see," or "We will see," and they departed.

Q. Did they leave together? A. Yes, sir.

Q. Did you remain in your law offices? A. I did.

5286

Q. Mr. Maguire, did you see Max Rubin sometime in August of 1937? A. I did.

Q. At that time did he call at your law offices? A. That is right.

Q. Did he speak with you? A. He did.

Q. After his conference with you did you arrange for Rubin to attend at the office of the District Attorney, who was then Special Prosecutor, Thomas E. Dewey? A. He was not Special Prosecutor, he was District Attorney.

Q. Did you make such arrangement? A. I did. Now, wait a minute. He was Special Prosecutor. You are right.

Q. Did he have on his staff as Assistant District Attorneys Messrs. Hogan and TenEyck?

A. Yes, sir.

Q. Was there any appointment made for Rubin to meet those Assistants? A. He was to meet Berent TenEyck.

Mr. Rosenthal: At the conclusion of the testimony I again move, in behalf of the defendant Capone, on the ground of prejudicial evidence, for a mistrial and the withdrawal of a juror, on the ground that this testimony is in no wise binding on him.

5288

The Court: Motion denied.

Mr. Rosenthal: Exception.

Mr. Talley: I make the same motion with respect to the defendant Weiss.

The Court: Motion denied.

Mr. Talley: Exception.

Cross-examination by Mr. Barshay:

Q. You testified in the flour case? A. In the New York case, yes.

5289

Q. In 1940? A. Yes, sir.

Q. In just the same way as you testified here? A. Substantially so, I believe.

Q. When you were called to testify, that was to apply against the defendant Buchalter?

Mr. Turkus: Objected to.

The Court: Sustained.

Q. You never saw Buchalter before, and you

5290

Edward C. Maguire—For People—Cross

never saw Buchalter thereafter? A. Excepting at the trial.

Q. I am speaking now of 1936. A. In 1936 I saw Buchalter once, at the time he was in my office.

Q. That was only for a few minutes? A. Yes, sir, ten minutes to fifteen minutes or so.

Q. You and he were absolute strangers to one another? A. Yes, sir.

Q. Now, Rubin had been to see you before?

5291

A. That is right.

Q. You knew Rubin fairly well? A. No, I would not say that. I may have met him three or four time, possibly, then, at dinners or the like of that.

Q. You knew his connection with the Expressmen's Local? A. I knew he was with a local, some teamsters' local.

Q. You claim you were retained by the local? A. That is right. I knew he was connected with the local.

5292

Q. Was he somewhat instrumental in getting the retainer in your behalf? A. When the committee came up he was present and he seemed to feel that it was desirable for the union to retain a lawyer. He expressed his thoughts in that direction.

Q. Did you learn, through your activity in the labor field and as a lawyer, that Dewey then was conducting investigations? A. I knew that from the newspapers, that it seemed to be general knowledge that certainly Mr. Dewey had investigations on.

Q. Mr. Dewey was not only conducting an in-

vestigation but he was conducting investigations, wasn't he? A. I suppose he was.

Q. Isn't that so? A. I suppose he was.

Q. Flour was one investigation; the garment racket was another investigation; isn't that so?

A. I am afraid they didn't tell me what they were doing there, but with the union they were very active.

Q. I don't say they told you, but it was common knowledge in the newspapers what Dewey was doing; he had already been in office upward of a year, hadn't he? A. That is right.

Q. As a general proposition, being a lawyer, you knew he was conducting investigations—plural—into various fields? A. Yes, sir.

Q. You did not know there was a Rosen investigation, did you? A. I knew this—that there was a great deal of publicity in September for some time with reference to the Rosen case. I do not want to go into anything.

Mr. Turkus: Just you finish your answer.

Q. Go ahead, finish your answer. A. At one time, subsequent to the time when I was retained by union Local 240, Rubin did mention the Rosen situation.

Q. Do you know when? A. I know he mentioned it to me a day or two before Mr. Buchalter came into the office. I believe, further, it was mentioned, not at any great length, but at one time when the committee of the union was in the office.

Q. With respect to Mr. Rubin, can you give us a definite date when he told you about the

5296

Edward C. Maguire—For People—Cross

Rosen case? A. My best judgment would be late in October or early in November, 1936, when Mr. Rubin, alone with me, mentioned the situation. The thing was mentioned with no great weight placed upon it, but just in passing at that time, when this committee was present.

5297

Q. Confining ourselves to Mr. Rubin, did he tell you he ever waived privilege—did he tell you his connection with the Rosen case? A. He told me some things about it, but I do not know if you would consider it a statement of his in connection with the Rosen case.

Q. Did you take a stenographic statement of what he said? A. I did not.

Q. In your professional point of view, from what he told you, did he implicate himself or exculpate himself in the Rosen case? A. He exculpated himself; he certainly did not involve himself in his statement.

5298

Q. From what he told you, you, as a lawyer, formed a conclusion that he was in no way involved in the Rosen case? A. I formed a conclusion he was in no way responsible in the Rosen case.

Q. And you advised him accordingly? A. Well, what he was after. The advice he wanted was along the lines I have outlined before, that I recited, at the time Buchalter was there.

Q. Take one step at a time, please.

Mr. Turkus: I object to that, one step at a time.

Q. When Rubin spoke to you the very time, you came to the conclusion from what he told

you that he had absolutely no connection whatever of a criminal nature in the Rosen case?

Mr. Turkus: I object to that as already answered in a different form.

The Court: That is what he said.

Mr. Turkus: It is repetitious, it has been answered by the witness in another way.

The Court: It is not a proper matter for objection by the District Attorney, but if any counsel for the other defendants object, the objection will be sustained. The opinion of counsel is of no consequence whatever.

5300

Mr. Barshay: No counsel objects. May I have an answer?

The Court: The objection is overruled.

A. From what he told me, I believe he was innocent of the Rosen case.

Q. And you so advised him? A. I did not so advise him.

Q. He did not ask you for advise as to whether he was innocent or guilty? A. He made a statement to me and then asked about this fugitive thing.

5301

Q. You did not give him any advice on the first proposition? A. I did not, that was not the question, that was not among the questions he asked me.

Q. You did not volunteer any advice to him? A. I did not.

Q. He did not tell you anybody was looking for him in Brooklyn, did he? A. No, sir, he did not.

5302

Edward C. Maguire—For People—Cross

Q. Of course, if he did, you would promptly advise him to go there, wouldn't you?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Did he say if any police were looking for him? A. He claimed that—

5303

Q. (Interrupting) Did he say that any Assistant District Attorney was looking for him? A. He did not.

Q. He did not tell you that anybody was asking for him at any time or any place up to that time, in the Borough of Brooklyn? A. That is right.

Q. Did he tell you about his participation in extortion, in the Borough of Manhattan? A. No, he did not, but he did mention that— I do not want to be long-winded—he did mention there was this Rosen situation and there was the Dewey situation. And then came the question about fleeing jurisdiction.

5304

Q. Did he tell you at any time that he was involved in the Dewey investigation? A. He did not.

Q. So that it is safe to say, Mr. Maguire, that at the time you spoke with Buchalter, you knew about the Rosen investigation? A. Yes, it had been mentioned to me, the Rosen matter had been mentioned, but as far as whether or not there was an actual investigation going on, to my own knowledge, I did not know it.

Q. That is what I want to know. Did you know of your own knowledge at any time that

Edward C. Maguire—For People—Cross

5305

Rubin was wanted in the Rosen investigation?

A. I did not.

Q. He did not tell you that, did he? A. He did not tell me he was wanted in the Rosen investigation.

Q. He did not seek advice from you on the Rosen investigation, did he?

Mr. Turkus: I object. That has been covered in all its phases, as to what the advice was.

5306

Mr. Barshay: I would be very much pleased if Mr. Turkus would just make objections and nothing else, no speeches.

The Court: The witness testified that there was mentioned both the Rosen situation and the Dewey situation, and that then followed the talk as to the question of flight. The present question calls for a conclusion and the objection is sustained.

Mr. Barshay: Exception.

Q. Did you tell Mr. Buchalter that Rubin spoke to you about the Rosen case? A. No, sir, I did not.

5307

Q. You did not say one word in those fifteen minutes, with respect to the Rosen case, in the presence of Buchalter? A. That is right.

Q. But there was a talk about the Dewey investigation during that fifteen minutes? A. The way it was referred to was as an investigation pending.

Q. (The Court) Nothing said about what? A. A specific Dewey investigation was not mentioned, either. It was "pending investigation".

5308

Edward C. Maguire—For People—Cross

Q. But Dewey was conducting investigations, wasn't he? A. Yes, sir, according to the press.

Q. In Brooklyn there was just one investigation which you said you only assumed was going on? A. I assumed something happened in September.

Q. You simply assumed it? A. Yes, sir.

5309

Q. So we have it now that in the fifteen minutes talk with Buchalter and Rubin in your office, not one word was mentioned with respect to the Rosen investigation? A. Not by name. The only thing that was referred to was, "investigation pending."

Q. And I agree with you that neither Rosen nor Dewey was mentioned—we have that clear? A. Yes, sir.

5310

Q. May I ask you whether, at the time you spoke to Buchalter and Rubin in your office, you, of your own knowledge, had been aware, through information given to you by Rubin, that there was a Rosen investigation; yes or no? A. A day or two before he had mentioned a Rosen matter, but he did not specifically advise me there was an investigation pending, so of my own knowledge—

Q. (Interrupting) The Rosen matter was in all the newspapers? A. Yes, sir, it was in September; I doubt if it was in October.

Q. It was a matter which required newspaper publicity—you knew something about it from the papers, having read it? A. Yes, sir.

Q. And it was generally discussed, Rubin may have—

Mr. Turkus: I object.

The Court: Objection sustained.

Edward C. Maguire—For People—Cross

5311

Q. Did he come seeking advice on the Rosen matter from you a day or two before?

Mr. Turkus: I object as already answered.

The Court: Objection sustained.

Q. Did you give him advice on the Rosen matter? A. I did not.

Q. It was mentioned in the ordinary course of events, was it? A. I would not characterize it that way; it was mentioned preliminary to the question about—the main question that he put to me.

5312

Q. In the preliminary matter he did not ask you—rather, he did not tell you that he was being sought as a witness in the Rosen case? A. He definitely did not.

Q. Were you asked these questions in the flour case, at page 1326:

“Q. Did you simply offer Mr. Rubin some advice along broad general lines? A. Yes, sir.

“Q. And that it was not in connection with any specific thing that he mentioned? A. He referred to pending investigations.

5313

“Q. There was an investigation pending at the time in the Rosen shooting, was there not?”

The Witness: Yes, sir.

Mr. Grumet: I object to that on the ground it has no bearing on the issue here.

The Court: I will allow the witness to answer if he knows.

“A. I Assume so; I don't know myself.”

5314

Edward C. Maguire—For People—Cross

Did you say that? A. Yes, sir, I said it. It is correct.

Mr. Turkus: That is the testimony here.

Mr. Cuff: I object to that as an improper statement.

The Court: Go ahead.

5315

Q. "Q. Well, then, you don't know what investigations were pending, do you, Mr. Maguire? A. I know the Dewey investigation was pending then."

Did you make that answer? A. Yes, sir.

Q. "Q. And how about the investigation in Brooklyn in connection with the shooting of Rosen?"

The Court: He just said he did not know, Mr. Kleinman."

Do you remember that? A. I did not say that; Mr. Kleinman may have said it.

5316

Mr. Turkus: I object, unless he gives the first question and answer and not stop when the lawyer makes objection.

Mr. Barshay: I never saw such conduct on the part of a public officer in all my life. I am reading questions and answers. I asked him whether he was asked that question and made that answer. I can only do it in one way. At that time I read what the Court said. I will now read—

Mr. Turkus: (Interrupting) He did

Edward C. Maguire—For People—Cross

5317

not read the answer, because there is no answer to the question. He could not have read something that is not an answer. You should know that, having been an assistant.

Mr. Barshay: Will your Honor please say something to the District Attorney to stop this?

The Court: I am trying to make out this.

Mr. Barshay: I am going to read every question and answer, one at a time.

5318

The Court: I want to get clear in my mind what you just read. It is not a matter for discussion with the witness. Ask him the question as to what he said.

Q. I want you to recall, when I was reading the questions and answers.

Mr. Turkus: He don't recall anything. This is all confusing.

The Court: You said you were going to read the next question and answer. Please do so.

5319

Q. "Q. How about the investigation in Brooklyn, in connection with the shooting of Rosen?"

And then this is the comment of the Court:

"He just said he did not know, Mr. Kleinman.

Mr. Kleinman: Well, I thought perhaps the fact he remembered the Dewey investigation might refresh his recollection, your Honor.

5320

Edward C. Maguire—For People—Cross

The Court: Well, I will allow you to repeat the question.

Q. Did you know, Mr. Maguire, about any investigation in Brooklyn? A. I assume there was one."

Did you make those answers to the question I just read to you? A. Unquestionably.

Q. (The Court) That was correct? A. Yes, sir.

5321

Q. Here is the next question:

"Q. And according to your testimony you merely advised that flight was bad under any circumstances, is that right? A. Definitely, yes, sir."

A. That is right.

Q. Of course, Mr. Maguire, in 1937, when Rubin came—he came to you previously, is that right? A. Yes.

Q. And so you knew, after you had discussed with him, which District Attorney you were to go to, did you?

5322

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. You did take him to Dewey's office? A. Yes, sir.

Q. You never did take him to the District Attorney's office in Brooklyn? A. I did not.

Q. At no time you never took him to the Police Department in the Borough of Brooklyn? A. I did not.

Q. You never surrendered him in any shape, manner or form to any authorities in Brooklyn? A. I did not.

Q. Did Mr. Buchalter say to you during that conversation, "Well, we will think it over"?

A. He said that at the conclusion.

Q. He never said to you, in your presence, or to Rubin, in your presence, "Don't leave the jurisdiction"? A. He did not.

Q. He never said to you, in your presence, or to Rubin, in your presence, "Get out of the jurisdiction"? A. He did not.

Mr. Talley: I have no cross-examination of this witness.

5324

Mr. Rosenthal: I wish to renew the motion I made, your Honor.

Mr. Talley: I move to strike out the testimony of this witness insofar as it applies to the defendant Weiss, on the ground it has no bearing on any of the matters in this indictment, respecting Weiss.

The Court: The Court cannot strike it out, but it will be applicable only against such defendant or defendants as are or will hereafter be connected with it. The jury will be instructed at the proper time, in the charge.

5325

Mr. Talley: I except to your Honor's refusal to grant the motion now.

Mr. Barshay: I move to strike out the testimony of Mr. Maguire on the ground it specifically shows that the inducement of flight, if any, was with respect to the Dewey investigation and no part of this case at all.

The Court: Oh, no. Motion denied.

Mr. Barshay: Exception.

5326

Paul Berger—For People—Direct

PAUL BERGER, residing at the Hotel Bessert, in the Borough of Brooklyn, City and State of New York, called as a witness in behalf of The People, after being duly sworn, testified as follows:

The Court: Is this man in custody as a material witness or as a defendant?

Mr. Turkus: He is in the custody of the New York City Police Department.

5327

The Court: As a material witness or as a defendant under indictment?

Mr. Turkus: He is under indictment in Manhattan.

The Court: Then before he is permitted to be your witness he should be advised as to his Constitutional rights. Has your lawyer advised you?

The Witness: Yes, sir.

The Court: As to your Constitutional rights?

The Witness: Yes, sir.

5328

The Court: All right, proceed.

(Bernard J. Gardener, 60 Wall Street, Borough of Manhattan, seated in the opposite jury box, addresses the Court.)

Mr. Gardener: I represent the witness, your Honor. I have only advised him by phone. I would like your Honor to advise him now.

The Court: Repeat that, please.

Mr. Gardener: I represent the witness. I have only advised him as to his Constitutional rights over the telephone.

Paul Berger--For People--Direct

5329

He is under indictment in New York County.

The Court: You have told him what his Constitutional rights as a witness are.

Mr. Gardener: Very briefly. I wish your Honor would so advise him at this time. It was with special reference to the indictment in New York.

The Court: We want to get this correct. The Court advises the witness that in the course of his examination he is entitled to refuse to answer any question upon the ground it will tend to degrade or incriminate him.

5330

Is that sufficient, Counsellor?

Mr. Gardener: I wish your Honor would do it further—If he is asked any questions concerning any crime committed in the State of New York, he may refuse to answer on the ground that the answer would incriminate him.

The Court: The Court so instructs you as to your Constitutional rights. The former instruction covered everything; this is specific. The previous instruction was sufficiently broad to cover the entire Constitutional privilege of the witness.

5331

Direct examination by Mr. Turkus:

Q. How old are you? A. Forty-one.

Q. Are you married? A. I am.

Q. Have you any children? A. I have.

Q. How many? A. One.

Q. A son? A. A son.

Q. How old is he? A. Twenty years old.

5332

Paul Berger—For People—Direct

Q. Did you go to public school in New York City? A. I did.

Q. What public school did you go to? A. No. 34.

Q. Where is Public School No. 34—where was it located at the time you went there? A. Broome and Sheriff Street.

Q. Is that on the East Side of Manhattan? A. Yes, sir, it is.

Q. Did you graduate from public school? A. I did.

5333

Q. After you graduated from public school did you go to high school? A. I did.

Q. To what kind of high school—was it a day or evening? A. Evening high school.

Q. How long did you go to evening high school? A. About six months.

Q. You quit school then? A. I did.

Q. How old were you when you quit school? A. About 16½.

Q. Did you do odd jobs after you quit school? A. Yes.

5334

Q. For example, what did you do? A. I sold newspapers, ice cream, chewing gum, things like that.

Q. In or about December of 1916 did you enlist in the United States Army? A. I did.

Q. Where were you stationed after your enlistment? A. Fort Slocum.

Q. How old were you when you enlisted in the United States Army? A. About 16½, a little over 16.

Q. When your mother found out you had enlisted in the Army at 16 years of age, did she do something? A. She went to the Command-

ing Officer and told him my age, and I was discharged.

Q. Sometime after your discharge from the United States Army for being under age, did you enlist in the National Guard? A. A number of months after that.

Q. Did you enlist in the National Guard? A. Yes, sir.

Q. In what regiment was it? A. The 14th, in Brooklyn.

Q. Where was the 14th sent? A. Up to guard the Aqueduct, in New York.

5336

Q. Were you sent up there on guard duty? A. I was.

Q. How old were you then? A. Past 17.

Q. When your mother found out about the enlistment in the National Guard, did she make complaint to the Commanding Officer? A. Yes, sir.

Q. Were you again put out of the Army? A. Yes, sir.

Q. After your second discharge from the United States Army, did you go to work? A. I did.

5337

Q. Do you recall now from whom you got that job, or by whom you were employed? A. I do.

Q. Who was your employer? A. Rensdorf & Kalikow.

Q. Where was that firm located? A. On West 3rd Street, Manhattan.

Q. What was the nature of the business of that firm? A. Clothing manufacturers.

Q. What kind of a job did you get in Rensdorf & Kalikow's? A. Cutter's apprentice.

5338

Paul Berger--For People--Direct

Q. Is that helper to a cutter? A. Helper to a cutter.

Q. How long did you work at that job with Rensdorf & Kalikow? A. I worked there about seven or eight years.

Q. Do you remember the time when that firm was unionized? A. I do.

Q. When was that? A. Around 1919.

Q. What union unionized that firm of Rensdorf & Kalikow?

5339

Mr. Barshay: I object.

The Court: Objection overruled.

A. The Amalgamated Clothing Workers of America.

Q. After the Amalgamated Clothing Workers of America, unionized the firm or their employees, did you become a member of the union? A. I did.

Q. What local did you join? A. Local 4.

Q. Local 4 of what? A. New York Clothing Cutters Union.

5340

Mr. Barshay: May I have one general objection so that I may not interrupt Mr. Turkus, and except to your Honor's ruling?

The Court: It is proper in the examination of a witness to show the jury who the man is that is talking. It is not proper upon the question of guilt or innocence. Objection overruled.

Mr. Barshay: Exception.

Q. Did you tell us you became a member of the union, Local 4 of the New York Clothing Cutters Union? A. That is right.

Q. Who was the manager of that local at the time you became a member? A. Murray Weinstein.

Q. After you joined the union, Local 4 of the Clothing Cutters, affiliated with the Amalgamated, did you continue working for Rensdorf & Kalikow? A. I did.

Q. After you became a union member did you do any union work? A. As far as picketing, here and there.

Q. When you say picketing here and there, do you mean picketing during the course of strikes in which the union was interested? A. Yes, sir.

Q. While you were connected with the union did you meet a man named Abie Slabow?

5342

Mr. Barshay: I object, highly prejudicial, not binding on this defendant, and this is before this man ever said that he knew the defendant Buchalter.

The Court: Objection overruled.

Mr. Barshay: Exception.

5343

A. I did.

Q. Was he connected with the union? A. At the time, yes, sir.

Q. And on the payroll? A. On the payroll.

Q. Did you know a man named Philip Orlofsky? A. I did.

Q. Did he occupy any official position in the union? A. He did.

5344

Paul Berger—For People—Direct

Q. What was it at that time, when you joined up, do you understand me? A. I do not.

Q. I will withdraw it. What position did Orlofsky have in the union, Philip Orlofsky?

A. Business agent.

Q. Now, who was the business manager of the union before Orlofsky?

5345

Mr. Climenko: I object to it as not binding on the defendants, too remote, and incompetent.

The Court: Objection overruled.

Mr. Climenko: Exception.

A. Murray Weinstein.

Q. Did Orlofsky take over Weinstein's job?

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

5346

A. He did.

Q. Do you know Louis Buchalter? A. I do.

Q. What other name did you know him by?

A. Lepke.

Q. After Orlofsky became manager, did you begin to see Lepke?

Mr. Barshay: May we have the time fixed, your Honor?

The Court: Objection overruled.

Mr. Barshay: We don't know whether this is 1919, 1920, 1930, or 1941.

The Court: Objection overruled.

Mr. Barshay: Exception.

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5347

The Court: You will find out in a minute.

A. I did.

Q. Was that sometime around 1926, if you can recall? A. 1927, to be exact.

Q. Did you, about that time, come to know a man named Jacob Shapiro?

Mr. Barshay: I object.

The Court: Objection overruled.

5348

Mr. Barshay: Exception.

A. I did.

Q. Did you know that Shapiro by any name other than Jacob Shapiro? A. I did.

Q. What name was he known by? A. Gurrah.

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant to this issue.

The Court: Objection overruled.

Mr. Barshay: Exception.

5349

Q. At or about that time did you come to know a man named Hymie Holtz?

Mr. Barshay: Objected to as incompetent, immaterial, and irrelevant.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

Q. Was Hymie Holtz known by any other name? A. He was.

Q. What name?

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Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Curley.

Q. Now, after Orlofsky became manager of the union did you see Lepke and Curley Holtz and Gurrah, at certain places?

5351

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant to the issue in this case.

The Court: Objection overruled.

Mr. Barshay: Also, it is a conclusion.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

Q. Where did you see them together? A. In the barber shop.

Q. Where was the barber shop located? A. On Broadway between 11th and 12th Streets.

5352

Q. How far from the Union Headquarters was the barber shop? A. About a block.

Q. When you saw Lepke and Gurrah and Holtz in this barber shop, did you see them with union officials there?

Mr. Barshay: I object to that as immaterial, too far afield, too remote to the issue in this case.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

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5353

Q. Who did you see them with, what union officials?

Mr. Barshay: The same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Philip Orlofsky, Lepke, Gurrah, Curley, Whitey Deutsch, Jack Noya.

Mr. Barshay: May we have the time and place, Mr. Turkus?

5354

Mr. Turkus: I cannot fix it every minute.

The Court: What year?

The Witness: To the best of my recollection around 1927.

Q. You know Max Rubin? A. I do.

Q. Did you see him? A. I did.

Q. Did you see him with Lepke, Gurrah, Curley, and Whitey Deutsch at that barber shop near Union Headquarters? A. On many occasions.

5355

Q. Did you see Rubin together with Lepke and Gurrah?

Mr. Barshay: Objected to as leading.

The Court: Sustained.

Q. With whom did you see Rubin close by the Union Headquarters at that time—who did he go with? Do you know what I mean? A. No.

Q. You say you saw Orlofsky and Rubin and Curley and Lepke and Deutsch in and around this barber shop? A. Yes, sir.

5356

Paul Berger—For People—Direct

Q. Did you see Rubin there too? A. Yes, sir.

Q. With those people? A. Yes, sir, with those people.

Q. On numerous times? A. Quite a number of times.

Q. Did you know Max Rubin well? A. I do.

Q. Did you see him around the clothing district in Manhattan? A. I did.

Q. Was he a union official? A. He was.

5357

Q. At the time Orlofsky was manager, did you know what jobs with the union Rubin had? A. Executive Board member.

Q. After Orlofsky became manager of the union were you assigned to any strike duty? A. I was.

Q. What kind of duties did you perform pursuant to assignment? A. Slugging, pickets.

Mr. Barshey: I urge your Honor that this is entirely not binding upon the defendants.

The Court: Objection overruled.

5358

Mr. Barshey: Exception.

A. (continuing) Kept scabs from going to work wherever there was a strike.

Q. Did you do those duties pursuant to your instructions?

Mr. Barshey: I object—instructions from whom?

The Court: Objection overruled.

Mr. Barshey: Exception.

I object further on the ground it is not binding on this defendant.

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The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

Q. Now, how long were you on that job doing that work on the strike? A. About two weeks.

Q. After that were you put to work? A. I was.

Mr. Barshay: I object; it is in no wise connected with this defendant; it is entirely incompetent, immaterial and irrelevant.

5360

The Court: Objection overruled.

Mr. Barshay: Exception.

Will you please give us the year, Mr. Turkus?

Q. With whom were you placed after the strike duty?

Mr. Barshay: I object. I make the same objection.

The Court: Objection overruled.

5361

Mr. Barshay: Exception.

A. J. Eisner & Son.

Q. You mean the business was J. Eisner & Son? What kind of a business was J. Eisner & Son conducting? A. Clothing manufacturers.

By the Court:

Q. That is in Red Bank? A. No, sir, it happened to be in Brooklyn at the time. This is a

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different concern; it is not the Red Bank concern.

By Mr. Turkus:

Q. After the strike duty you went to work with J. Eisner & Son. What kind of clothing were they then manufacturing? A. Men's clothing.

Q. How long did you stay at that job?

5363

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. About a year.

Q. After that did you work for other firms in the clothing industry? A. I did.

Q. Can you recall the names of the firms by whom you were employed? A. I can.

Q. Will you tell us the ones that you can recall? A. The Eagle Clothes, Barshewitz Bros., Greenberg & Kupperman.

5364

Q. Did you also work for the Worlds Clothing Exchange? A. I did.

Q. And for the firm of Max Udel & Sons? A. I did.

Q. Can you tell us what year you worked for Greenberg & Kupperman when you began to work for them? A. The beginning of 1932.

Q. Did you know a man named Bruno Belea?

Mr. Barshay: I object to that as immaterial, not binding on the defendants.

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The Court: Objection overruled.

Mr. Barshay: Exception.

A. I do.

Q. How long have you known Bruno Belea?

A. About between 12 and 14 years.

The Court: Gentlemen of the jury, please do not discuss the case nor let anybody talk to you about it. Keep your minds open.

5366

We will take a recess until 1:30 P. M.

Let the witness leave first.

The jury will leave by the other door.

The defendants are remanded.

Recess until 1:30 P. M.

(Whereupon a recess was taken to 1:30 P. M.)

AFTERNOON SESSION

TRIAL RESUMED

5367

PAUL BERGER, resumed the stand and testified further, as follows:

Direct examination by Mr. Turkus (continued):

Q. Just before we went to lunch you told the Court and jury that you knew Bruno Belia, is that correct? A. That is right.

Q. Was Bruno Belia an official attached to the Amalgamated Clothing Workers of America in some capacity?

5368

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Mr. Climenko: I object to that as not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Climenko: Exception.

A. He was.

Q. What was his position? A. General organizer.

Q. Do you recall the Finkelstein Brothers strike in the Bronx? A. I do.

5369

Q. Was Bruno Belia the organizer at that time?

Mr. Barshay: May we fix the date, please?

The Court: Yes, fix the date.

The Witness: It was either '27 or '28.

Mr. Barshay: I object to it. It is entirely incompetent, irrelevant, immaterial.

The Court: Overruled.

Mr. Barshay: Exception.

5370

Q. Will you answer the main question?

(Question read.)

A. One of them.

Q. Did you meet Bruno Belia frequently at union headquarters?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

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5371

Q. Do you know whether or not Bruno Belia is still an organizer for the Amalgamated?

Mr. Barshay: Same objection; not binding on the defendant.

The Court: Overruled.

Mr. Barshay: Exception.

A. He is.

Q. In or about the year 1931 was this Irving Whitey Deutsch connected with the union?

5372

Mr. Barshay: Same objection, your Honor.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Just yes or no. A. He was.

Q. Was he on the payroll?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

5373

A. He was.

Q. Did this Irving Dentsch, whom you described also as known as Whitey, have some connection for the firm that you were working for—

Mr. Barshay: Same objection.

Q. —namely, Greenberg and Kupperman?

Mr. Barshay: Same objection.

The Court: Overruled.

5374

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Mr. Barshay: Exception.

A. He did.

Q. While you were working for Greenberg and Kupperman, in or about the year 1931, did you there see Lepke and Gurrah?

Mr. Barshay: Same objection. I wish counsel would not lead.

The Court: Overruled.

5375

Mr. Barshay: Exception.

A. I did.

Q. Did you see them there at the same time that you saw Irving Whitey Deutsch?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. Did you see Lepke, Gurrah and Deutsch in conversation, that is, talking to each other?

5376

~~Mr. Barshay: 1931?~~

Mr. Turkus: Yes.

A. I did.

Mr. Barshay: Same objection; on the further ground it is too remote.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Did you see them talking together a num-

ber of times? A. Quite a number of times, yes, sir.

Q. Do you remember when there was a dispute between the Orlofsky faction and the Hillman faction—

Mr. Barshay: Same objection.

Q. —of the union?

Mr. Barshay: I renew my objection.

5378

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. What year was that, can you recall? Can you remember the year? A. 1932.

Q. At the time of the Orlofsky-Hillman factional dispute, did Lepke have a talk with you?

A. He did.

Q. Did he give you a job to do?

Mr. Barshay: I object to it.

The Court: Overruled.

5379

Mr. Barshay: Exception.

A. He did.

Q. What did he tell you to do?

Mr. Barshay: I object to it. It has nothing to do with this case.

The Court: Overruled.

Mr. Barshay: Exception.

A. He told me to go in the market and speak to members to be with the Phil Orlofsky faction.

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Mr. Barshay: I move to strike out the answer as entirely irrelevant to the issues in this case.

The Court: Overruled.

Mr. Barshay: Exception.

Q. When you say the "market", do you mean the clothing market? A. That is right.

5381

Q. And you were told by the defendant Lepke to speak to people in the clothing market to side with the Orlofsky group, is that it?

Mr. Barshay: I object to counsel repeating an answer.

The Court: Overruled.

Mr. Barshay: Exception.

A. That is right.

Q. Did you, after you received that job, speak to people down at the market to side with the Orlofsky faction?

5382

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. Do you know the result of that Hillman-Orlofsky dispute?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Yes or no. A. I do.

Q. Did Orlofsky quit the dispute?

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Mr. Barshay: I object to it as not binding on this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

A. He did.

Q. And after that, was he out of the union?

A. He was.

Mr. Barshay: Same objection.

5384

Q. After that dispute was ended by Orlofsky quitting, did you continue working for Greenberg and Kupperman? A. I did.

Q. Until about what year did you continue working for Greenberg and Kupperman, if you can recall the year? A. To the best of my recollection, about 1933.

Q. Did you know a man by the name of Danny Fields? A. I did.

Q. Do you remember when a general stoppage was called in the clothing trucking industry?

Mr. Climenko: If your Honor please, we object to this as not binding on the defendant, as leading.

5385

The Court: Overruled.

Mr. Climenko: Exception.

A. I do.

Q. This question answer only yes or no: Before that stoppage was called, did Danny Fields have a talk with you?

Mr. Barshay: I object to it, sir; not binding on the defendant.

5386

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The Court: Overruled.

Mr. Barshay: Exception.

A. Yes.

Q. After you had the talk with Danny Fields, did you have a talk with Lepke? A. I did.

Q. After you spoke to Lepke, were you put on the payroll?

Mr. Barshay: I object to it, sir.

5387

The Court: Overruled.

Mr. Barshay: Exception.

A. I was.

Q. When you were put on the payroll, did Lepke say anything to you about a man named Murray Weinstein?

Mr. Barshay: I object to it as not relevant to the issues in this case.

The Court: Overruled.

Mr. Barshay: Exception.

5388

A. Yes.

Q. What did Lepke say? A. I should do everything Murray Weinstein tells me.

Q. Were you invited by Lepke and Weinstein to go to a certain hotel?

Mr. Barshay: Fix the time, please.

A. I was.

Q. What was the name of the hotel? A. Hotel Governor Clinton.

Q. When you got there, who was there? A.

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5389

Murray Weinstein, Sam Katz, Danny Fields, myself, Lepke, Charlie Gurrah.

Q. At that time what was Murray Weinstein in the union? A. Manager of Local 4.

Q. By manager, do you mean business manager? A. Business manager.

Q. Had he taken Orlofsky's place?

Mr. Barshay: Objected to; not binding on the defendant.

The Court: Overruled.

5390

Mr. Barshay: Exception.

A. He did.

Q. What was Sam Katz with the union at the time of the meeting in the Governor Clinton hotel?

Mr. Barshay: Same objection; not binding on the defendant.

The Court: Overruled.

Mr. Barshay: Exception.

5391

A. Business agent.

Q. Of what local? A. Local 4.

Q. Clothing Cutters' Union? A. That is right.

Q. When you were up at the Governor Clinton Hotel with those people whose names you have given to the Court and jury, did Lepke speak to you? A. He did.

Q. What did he tell you? A. He told us that we should— We discussed the stoppage for the next day, and I was told to be with Danny Fields on the corner of 16th Street and Fifth Avenue about 5:30 in the morning, and over there we would meet a number of other union

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men and we will stop trucks delivering and taking out work from any clothing house.

Q. That meeting at the Governor Clinton Hotel, then, was the day before the general stoppage of the trucking industry; is that correct?

A. That is right.

Mr. Barshay: I move to strike out the answer before this question.

The Court: Denied.

5393

Mr. Barshay: Exception.

Q. And at that meeting at the Governor Clinton Hotel with those people whose names you told the Court and jury, you got the instructions you just told us; is that correct? A. That is right.

Q. After you got the instructions, did you go down to the clothing district the next day? A. I did.

Q. Did you do what you were told to do? A. I did.

5394

Q. And did you perform the duties that you were instructed to do? A. I did.

Mr. Barshay: I object to the form of the question, calls for a conclusion.

The Court: This is purely collateral.

Mr. Barshay: I object to it on the further ground, too, but your Honor has overruled it. He can tell what he did.

The Court: Yes, tell what you did.

The Witness: We stopped trucks, sluggish drivers, things along those lines.

Mr. Barshay: I move to strike out he "sluggish drivers", because he, in his own

testimony, your Honor, said that he received no such instructions.

The Court: You wanted to know what he did. Now you heard it.

Mr. Barshay: I wanted to know what he did pursuant to the instructions, not what he did on his own.

The Court: Let the jury figure that out.

Mr. Barshay: Exception, sir. I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. After your day's work was done during the stoppage, did you go back and see anybody?

Mr. Barshay: I object to the characterization, "After your day's work was done".

The Court: Overruled.

Mr. Barshay: Exception.

A. We did.

Q. Whom did you report to? A. To Lepke, Murray Weinstein, Sam Katz.

Q. Where did you report to Lepke after the day's work was done? A. Met up in the Governor Clinton.

Q. And when you made your reports nightly, who was there at the Governor Clinton?

Mr. Barshay: I object to the characterization.

The Court: Overruled.

Mr. Barshay: Exception.

5398

Paul Berger—For People—Direct

A. Lepke, Gurrah, myself, Danny Fields, Murray Weinstein, Sam Katz.

Q. When these nightly reports were made, were plans discussed as to what should be done the following day?

Mr. Barshay: I object to it, sir, entirely irrelevant to this issue, your Honor.

The Court: Overruled.

Mr. Barshay: Exception.

5399

A. It was.

Q. Was that stoppage at one time settled?

A. It was.

Q. After the stoppage came to an end, did you continue on the payroll of the union?

Mr. Barshay: I object to it as not binding on this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

5400

A. I did.

Q. While you were on the payroll of the union at any time did either Murray Weinstein or Sam Katz give you money to bring to someone?

Mr. Barshay: I object to it as not binding on this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

A. He did.

Q. By "he", do you mean Murray Weinstein and Sam Katz? A. Either one of them.

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5401

Q. When you got that money, to whom did you deliver it? A. Lepke.

Mr. Barshay: I move to strike out the answer as entirely irrelevant to this issue.

The Court: What is the purpose of this?

Mr. Turkus: Showing that Lepke and the unions were closely allied.

The Court: Objection overruled.

5402

Mr. Barshay: Exception, sir.

Q. When you were on the payroll of the union, did you become an intermediary, a go-between, between Weinstein and Lepke?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. I was.

Q. Did you make appointments for Weinstein to meet Lepke and for Lepke to meet Weinstein?

5403

Mr. Barshay: I object to it; nothing to do with this case.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. Do you remember the time when Danny Fields left New York City? A. I do.

Mr. Barshay: I object to it as not binding on the defendant.

5404

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The Court: Overruled.

Mr. Barshay: Exception.

Q. Can you tell us approximately when that was, to the best of your recollection?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

5405

A. March or April, 1936.

Q. Before Danny Fields left town, did he talk with you; yes or no? A. He did.

Q. After Danny Fields spoke to you, did you see Lepke? A. I did.

Q. And did you do business for Lepke, without stating what it was?

Mr. Barshay: I object to the form of the question.

The Court: Overruled.

Mr. Barshay: Exception.

5406

A. I did.

Q. Did you come in frequent contact with Lepke from time to time thereafter?

Mr. Barshay: I object to it. It is immaterial to the issue here.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. How often did you see Lepke from that time on, for a period of time?

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5407

Mr. Barshay: Same objection.

Q. How often, how many times during the week?

The Court: Overruled.

Mr. Barshay: Exception.

A. Every day or every other day.

Q. Did you know Joseph Rosen during his life time? A. I did.

5408

Q. Where did you come to know him, from what industry? A. Clothing industry.

Q. Was he a clothing trucker? A. He was.

Q. And where did you come in contact with him, that is, where did you see him? A. On the clothing market.

Q. Did you ever have any business dealings with him? A. I did.

Q. When was that? A. That was the time when I was contracting for the World's Clothing Exchange.

Q. At that time who was Rosen working for, do you know? A. He was working for Louis Cooper.

5409

Q. And did the World's Clothing Exchange have business with Louis Cooper? A. They were doing some trucking for us.

Q. Did you come to see Rosen frequently? A. I did.

Q. This question respond only yes or no: Do you recall reading in the newspapers about Joseph Rosen being killed? A. Yes.

Q. On the Friday before Rosen was killed, did you see Max Rubin? A. I did.

5410

Paul Berger—For People—Direct

Q. Did he talk to you? A. He did.

Q. What did he say to you?

Mr. Barshay: I object to it—in the absence of the defendant.

The Court: According to Rubin's testimony, he testified that Buchalter told him on that Friday to send this witness to see him right away, and that he conveyed the message. For that reason the objection is overruled.

5411

Mr. Barshay: I except, sir.
(Pending question read.)

A. That Lepke wants to see me.

Q. Can you remember where you were when Rubin told you that Lepke wants to see you?

A. I was up in the Clothing Cutters' headquarters.

Q. Is that known as union headquarters? A. That is right.

Q. After Rubin told you that Lepke wanted to see you, did you go up to see Lepke? A. I did.

5412

Q. Where did you go to see Lepke? A. Up in his office.

Q. Where was it located? A. 200 Fifth Avenue.

Q. Is that the place you had been going to frequently, as you have heretofore testified, on other business dealings with Lepke? A. That is right.

Q. When you got up to Lepke's office, what happened? A. I opened the door and Lepke walked out. He said to me, "You know that Joe Rosen?" I said, "Yes." He said, "I want

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you to point him out." I said, "All right." He said, "Wait for me down the hall."

Mr. Rosenthal: We do not hear him.
(Answer repeated by reporter.)

Q. Where down the hall did you go to wait for Lepke? A. The floor below, at the foot of the stairs.

Q. Did you there wait for him on the floor below? A. I did.

Q. Did Lepke come down? A. He did.

Q. And did you meet him on that floor below? A. I did.

Q. Did you accompany Lepke downstairs? A. I did.

Q. On those visits that you had been making to Lepke at 230 Fifth Avenue, had you gotten off at the same floor every time in the past?

Mr. Barshay: I object to counsel leading, your Honor.

The Court: Sustained.

Q. When you visited Lepke, what floors did you get off at? A. Either the floor below or the floor above the office.

Q. Did anyone tell you to do that? A. Yes, sir.

Q. Who? A. Lepke.

Q. Now, we are getting back to the Friday before the Rosen killing. When you got downstairs with Lepke, what did he do? A. He got into a cab.

Q. Did you get into the cab with Lepke? A. I did.

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5416

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Q. Who gave the driver the directions? A. Lepke.

Q. Where was the cab driver directed to stop the cab? A. In Suffolk Street and Grand Street.

Q. Is that in the East Side, Manhattan? A. That is right.

Q. Did the cab stop there? A. He did.

Q. Did Lepke get out of the cab? A. He did.

Q. Did you get out of the cab too? A. I did.

5417

Q. What happened after you and Lepke got out of the cab? A. He walked down Suffolk Street towards Broome Street, and near the corner we met some man there.

Q. Do you know who that man was that was met? A. I do not.

Q. Did Lepke speak to the man? A. He did.

Q. Did you hear what he said to him? A. I did.

Q. What did he say to that man? A. "Come over to the corner of Clinton and Broome and tell Mendy I want to see him."

5418

Q. How far away was Clinton and Broome Street from where Lepke told that man to go over and get Mendy? A. About a block.

Q. Some time after Lepke told this man to get Mendy, who showed up? A. Mendy.

Q. What is Mendy's full name? A. Emanuel Weiss.

Q. Emanuel Weiss? A. That is right.

Q. Had you known Emanuel Weiss before that, or Mendy, as you call him? A. I did.

Q. Now, when Mendy Weiss showed up, did Lepke talk to Mendy Weiss? A. He did.

Q. How long did Lepke talk to Mendy Weiss? A. Between five and ten minutes.

Q. Tell the jury when Mendy Weiss approached what Lepke did. Do you understand me? A. He walked towards him.

Q. In walking toward Mendy Weiss, did he walk away from you? A. He did.

Q. Were they at a distance away from you where you could not hear what Lepke and Mendy Weiss were talking? A. They were.

Q. You did not hear, did you, what Lepke said to Mendy Weiss, or what Mendy Weiss said to Lepke? A. No.

Q. After they spoke together for that period of time that you told the Court and jury, did Lepke come over to you? A. He did.

Q. Did he come over with Mendy? A. He did.

Q. What did Lepke say to you with Mendy there alongside of the two of you? A. He told me to point out Joe Rosen to him.

Q. After Lepke told you that in Mendy Weiss' presence, did Lepke go away? A. He did.

Q. Where did you and Mendy Weiss go? A. Went over to eat.

Q. Where did you go to eat, if you can remember? A. Restaurant was located at the time on Clinton and Broome Street.

Q. A restaurant then located on the corner of Clinton and Broome Street? A. That is right.

Q. After Mendy Weiss and you had the meal, did you go some place? A. We did.

Q. In an automobile? A. That is right.

Q. Whose automobile? A. Mendy's.

Q. Who drove the car? A. Mendy.

Q. Where did Mendy Weiss drive that automobile? A. To Saratoga and Livonia Avenue.

Q. Brownsville? A. That is right.

Q. Brooklyn? A. That is right.

5422

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Q. You say you had known Mendy Weiss from before? A. I did.

Q. How long before had you known him, the best estimate that you can give? A. About two years.

Q. Had you seen him in company with Lepke before this Friday? A. I did.

Q. A number of occasions? A. Quite a number of occasions.

5423

Q. Had you yourself had any personal dealings with Mendy Weiss before this Friday? A. I did.

Q. You came to the point in your testimony where you said Mendy Weiss drove over to the corner of Saratoga and Livonia Avenue, in Brownsville; is that correct? A. That is right.

Q. Did Mendy Weiss bring the car to a stop at or near that corner? A. He did.

Q. Did you see what Mendy Weiss did when he stopped the car? A. I did.

Q. What did he do? A. He got out of the car and walked into the candy store.

5424

Q. Where was the candy store? A. Saratoga and Livonia Avenue.

Q. To your knowledge, was that place a hang-out for the Brownsville boys?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exeeption.

A. It was.

Q. Do you know how long he stayed in the candy store? A. About five minutes.

Q. Did he come back to the car? A. Yes.

Q. After he came out of the candy store and went back into the car, did he drive the car some place else? A. He did.

Q. Where did he drive it to, then? A. Sackman and Livonia.

Q. Also in Brownsville? A. That is right.

Q. A short distance away from the candy store? A. That is right.

Q. When he stopped the car at Sackman and Livonia, what did Mendy Weiss do? A. He got out of the car.

5426

Q. Did he say anything to you? A. No.

Q. Did you see where he went when he got out of the car? A. I did.

Q. Where did he go? A. He went across the street, speaking to Capone.

Q. Speaking to whom? A. Louis Capone.

Q. Had you known Louis Capone before that? A. I did.

Q. Can you tell us approximately how long you had known him before that occasion? A. Around two years.

Q. Did you see Mendy Weiss talk to Capone? A. I did.

5427

Q. After they were through talking, did you see what Mendy Weiss and Capone did? A. I did.

Q. What did they do? A. Walked over to the car.

Q. Both of them? A. Both of them.

Q. When Capone walked over to the car with Mendy Weiss, what did you do? A. Capone said, "Hello", to me, and I said, "Hello", to him.

Q. Who got into the car? A. Mendy.

5428

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Q. Did Capone get in? A. No.

Q. Did Mendy Weiss then drive the car some place else? A. He did.

Q. Where did he drive the car? A. Some corner off Sutter Avenue.

Q. Did Mendy Weiss stop the car on a corner off Sutter Avenue?

5429

Mr. Barshay: Your Honor, may counsel not lead? This is most material. The witness can be asked what he did.

The Court: Yes, this is vital.

Mr. Barshay: Let him tell what he did.

Mr. Turkus: He has already testified to this.

The Court: All right.

Mr. Barshay: Let him tell what he did.

The Court: You can ask him just where he stopped the car in relation to Sutter.

Mr. Turkus: I will adopt the Court's suggestion.

5430

Q. Where, in relation to that corner of Sutter Avenue, did Mendy Weiss stop the car? A. Off Sutter Avenue.

Q. When he stopped the car, did he say anything to you? A. He did.

Q. What did he say? A. He says, "Come on. I will show you where the candy store is and see if you can see Joe Rosen there."

Q. Did you go with Mendy Weiss? A. I did.

Q. Where did he walk to? A. We walked on the opposite side of the candy store, on Sutter Avenue.

Q. When you got opposite the candy store, what happened? A. As we got opposite the candy store, it just happened that Joe Rosen was coming out of the candy store and he was fixing some newspapers and he was fixing the jars on the window there, and I said to him, "That's him, there he is."

Q. When you said to Mendy, "That's him, there he is," what did Mendy say to you? A. "All right," he said. "Now, get back to the car."

5432

Q. When Mendy said, "Go back to the car," did you see what Mendy did? A. I did.

Q. What did he do? A. I walked up a few steps and I turned around and I seen him crossing over the street to the side where the candy store is, walked past it once, walked back again. Then he walked toward the side I was on.

Q. Did he come over to you? A. He did.

Q. When Mendy Weiss re-joined you, did he have any talk with you? A. He did.

Q. What was said? What did you say? A. I asked him if he'll know him now.

5433

Mr. Talley: Louder.

The Witness: I asked him if he'll know this Joe Rosen now. He said, "Yes, I will know him all right."

Q. Where did you go after that, after Mendy Weiss said that? A. Went down to the East Side.

Mr. Turkus: May I have People's Exhibit 2 put back on the easel?

5434

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Q. Turn around, please, and look at the candy store, People's Exhibit 2, in evidence, and tell us is that the candy store. A. That is it (indicating).

Mr. Turkus: Indicating the candy store on People's Exhibit 2, in evidence.

Q. On the Sunday after that Friday did you read a newspaper? A. I did.

5435

Q. Do you recall the name of the newspaper? A. I do.

Q. What was it? A. News.

Q. Was it the Monday morning News? A. That is right.

Q. Just answer this question yes or no: Did you in that newspaper read an account of the killing of Joseph Rosen? A. I did.

Q. After the killing of Joseph Rosen, did you speak with Lepke? A. I did.

Q. Where was that? A. Up in his office.

Q. What was the conversation?

5436

Mr. Barshay: Time, please.

Mr. Turkus: After the Rosen killing.

Mr. Barshay: I know that. A year later, a day later, or when? I object to it unless a time is set, your Honor.

The Court: How long after?

The Witness: That was Monday following the murder.

Q. What did Lepke say to you? A. He asked me what the reaction is in the market.

Q. The jury did not hear you. A. He asked me what the reaction is in the clothing market.

Q. The reaction as to what? A. As to the killing of Joe Rosen.

Q. What did you ~~say~~ say? A. I told him, "They all seem to be scared."

Q. What did he say to you then? A. He asked me if I seen Sam Katz and Murray Weinstein.

Q. What did you say to Lepke? A. I told him I did.

5438

Q. Yes, and when you told him you did, what did Lepke say, or did you say anything else? A. I told him, "They seem to be terrible nervous and worried."

Q. Who was terribly nervous and worried? A. Murray Weinstein and Sam Katz.

Q. When you told that to Lepke, what did he say to you? A. "Tell them I want to see them."

Q. After Lepke told you he wanted to see Weinstein and Katz, for you to tell them that, did you speak to Murray Weinstein and Sam Katz? A. I did.

5439

Q. Did you tell them that Lepke wanted to see them? A. I did.

Q. What did they say?

Mr. Barshay: I object to what they said.

The Court: Overruled.

Mr. Barshay: Exception.

A. They said, "Things is too hot now. Wait until it cools off and then we will see him."

5440

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Mr. Barshay: I move to strike out the answer as not binding on this defendant, what Weinstein and Katz said.

Mr. Turkus: It will be connected.

The Court: Denied.

Mr. Barshay: Exception.

Q. After you were told that, did you see Lepke? A. I did.

5441

Q. What did you tell Lepke? A. I told him what Murray Weinstein and Sam Katz told me.

Q. In order to keep the record straight, you must say the exact language that you said to Lepke as best you can recall. What did you say about Weinstein and Katz to Lepke? A. I told him that, "I told Murray and Sam Katz that you want to see them and they told me to wait until things cool down a bit," then they will see him.

Q. About two weeks or thereabouts after the Rosen killing, did you have a talk with Max Rubin? Yes or no. A. Yes.

5442

Q. After you had that talk with Max Rubin, were you introduced to some people? Yes or no. A. Yes.

Mr. Barshay: I move to strike out the answer as not binding on this defendant.

The Court: Denied.

Mr. Barshay: Exception.

Q. After that did you see Lepke? A. I did.

Q. Did he talk to you? Yes or no. A. Yes.

Q. Did he say anything about Max Rubin? Yes or no. A. Yes.

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5443

Q. Did he say anything about Danny Fields?
Only yes or no. A. Yes.

Q. What did he say in that talk? A. He said
it would be advisable for Max to go with Danny
Fields.

Q. Did he say how long?

Mr. Barshay: Let us have the full con-
versation, without suggestions, if your
Honor pleases.

The Court: Overruled.

5444

Mr. Barshay: Exception.

The Court: Yes, I think that is right.

Mr. Turkus: All right, it is withdrawn.

Q. When he said it would be advisable for
Rubin to go with Danny Fields, did he say
something else? A. Yes.

Q. Tell us what he said? A. Until things
clear out in Brooklyn.

Q. Did he tell you to do anything? A. He
did.

Q. Did he tell you to get in touch with any-
one?

5445

Mr. Barshay: Please don't lead, Mr.
Turkus. What did he tell you?

Mr. Turkus: I will ask it the way you
want it and you take what goes with it.
Is there an objection to the question?

Mr. Barshay: Yes, I object to counsel
leading, your Honor.

The Court: Do you object to this ques-
tion upon that ground?

Mr. Barshay: Yes, your Honor.

The Court: Sustained.

5446

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Q. What did Lepke say to you? A. He told me to get in touch with Danny Fields and make all arrangements for Rubin to go up there.

Q. Did he say anything else? A. He did.

Q. What did he say? A. Until things clear up in Brooklyn.

Q. Did you get in touch with Danny Fields after that? A. I did.

Q. Did you and Rubin go any place after that? A. I did.

5447

Q. Where? A. I made an appointment with Danny over in the Rustic Cabin.

Q. On what road is that? A. 9-W.

Q. When you got to the Rustic Cabin with Rubin, whom did you see him meet there? A. Danny Fields and a girl by the name of Ruth.

Q. And this girl, was that Danny's girl? A. That is right.

Q. After that meeting, did you go back to New York? A. I did.

Q. Did Rubin remain with Fields and Fields' girl? A. He did.

5448

Q. Did you see Lepke after that? A. I did.

Q. When after that? A. The next day.

Q. Did you talk to him? A. I did.

Q. What did you say to Lepke? A. I told him that I had Rubin over to meet Danny Fields and all arrangements were made for Rubin to stay with Danny.

Q. When you told that to Lepke, did Lepke tell you to do anything? A. He did.

Q. What did he tell you? A. He told me to keep in touch with Danny and tell Danny to pep Rubin up.

Q. Did you get in touch and keep in touch with Danny Fields? A. I did.

Q. Just answer this yes or no: Did he tell you certain things? A. He did.

Q. Did you tell those things to anybody?

Mr. Barshay: Who is "he", Mr. Turkus?

Mr. Turkus: Danny Fields.

Mr. Barshay: I object to what Danny Fields said to this man.

5450

The Court: Yes or no. Overruled.

Mr. Barshay: Exception.

(Question read.)

A. I did.

Q. Whom did you tell it to? A. To Lepke.

Q. What did you tell Lepke? A. I told Lepke that I got in touch with Danny and Danny told me that Max called him up. At that time Max was staying in Saratoga and Danny Fields was stopping over in Glens Falls. Max Rubin called him up two o'clock in the morning and told him he must see him right away and Danny Fields rode over to see him and when he got there he seen Rubin raving.

5451

Mr. Barshay: I object to anything that happened, the defendant not being present, your Honor.

Mr. Turkus: This is a conversation.

The Court: With Lepke. Overruled.

Mr. Barshay: Exception.

Q. Rubin was raving. Go ahead. A. Rubin was raving on account he was named in the

5452

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newspapers that he was wanted for questioning in the Joe Rosen murder.

Q. Just get back a minute. Before you related that conversation to Lepke, did Lepke again speak to you about meeting Weinstein and Katz, before that incident with Rubin? A. He did.

Q. What did he tell you to do? A. He told me to make an appointment, that he wants to see Murray Weinstein and Sam Katz.

5453

Q. When Lepke told you that, did you get in touch with Murray Weinstein and Sam Katz? A. I did.

Q. Did you make an appointment? A. I did.

Q. What place? A. The Governor Clinton Hotel.

Q. Did you attend the meeting? A. I did not.

Q. Did you see Lepke some time after the meeting had been scheduled? A. I did.

Q. When after? A. Next day.

Q. Did Lepke say anything to you? A. He did.

5454

Q. What did he say? A. He told me that he made arrangements with Murray Weinstein and Sam Katz to give Max Rubin \$50 a week while he was away.

Q. Did he say anything about the collection of the money? A. He did.

Q. What did he say? A. That I should get it from either Murray or Sam and give it to Max Rubin.

Q. Was it after that that you had gotten the telephone call from Danny Fields and you related to Lepke about Rubin raving about something in the newspapers? A. That is right.

Q. When you told Lepke what Danny Fields had told you about Rubin, did Lepke say anything? I am referring to the conversation when you told Lepke that you received a telephone call from Danny Fields that Rubin was raving about something that appeared in the newspapers. Did you say anything else to Lepke and did he say something else to you? A. I did.

Q. Tell us what was said? A. I told him that Danny told me that he would not have him up there.

5456

Q. Would not have Rubin up there? A. That is right.

Q. Yes. A. And the next day I got a telephone call from Max Rubin and he told me he was over in the Hatfield Hotel and then I told Lepke and he says, "I don't know what I am going to do with that son of a bitch. He has to stay away until things clear up in Brooklyn."

Q. After Lepke said that, did you hear from Max Rubin? Did you hear from him? A. I did.

5457

Q. In what way? A. By telephone.

Q. Did you speak with him on the phone? Yes or no. A. I did.

Q. Did you go to see Lepke after that telephone call with Rubin? A. I did.

Q. Did you speak to Lepke? A. I did.

Q. What did you say to him? A. Told him I got a call from Max Rubin, he is over in the Hotel Hatfield.

Q. When you told Lepke that you got a call from Max Rubin, that he was over at the Hotel Hatfield, did Lepke say anything? A. Yes.

5458

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Q. What did he say. A. He says, "I don't know what I am going to do with that son of a bitch. He has to stay away until things clear up in Brooklyn." He said, "Come on over. I will go over to see him with you."

Q. Did you go over to the Hatfield with Lepke?
A. I did.

Q. When you got there did Lepke talk to Rubin? A. He did.

5459 Q. What did he say to Rubin? A. He says, "Listen, Max, you got to stay away until things clear up in Brooklyn and you know things are getting pretty hot in New York", and Max said to him, "I can't get along with Danny." Lepke said, "Well, I think I got another spot for you."

Q. Do you know whether Lepke mentioned that other spot at that time? Can you remember?
A. Yes.

Q. What spot did he mention? A. Salt Lake City.

Q. Any particular place in Salt Lake City?
A. No.

5460 Q. Well, when Lepke spoke of this Salt Lake City, did Rubin agree to go? A. He did.

Q. Do you know a man named Willie Alberts?
A. I do.

Q. Do you know what business he was in? A. I do.

Q. What business? A. Bonding business.

Q. Do you know where his office was located?
A. I do.

Q. Where was it? A. Lafayette Street.

Q. Some time after that meeting in the hotel between Lepke, Rubin and yourself, did you learn that Rubin had left New York City? A. I did.

Q. From whom? A. From Lepke.

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5461

Q. What did he tell you? A. He told me that he sent him to Salt Lake City with a relative of Willie Alberts.

Q. Did he give you any instructions, Lepke give you any instructions? A. He did.

Q. What did he tell you? A. He told me to keep his money, meaning the \$50 a week I was getting from Murray Weinstein; I should hold it until he'll see him.

Q. After that did you hear from Rubin? A. I did.

5462

Q. How long after, if you can remember? A. To the best of my recollection, about two or three weeks after.

Q. Did Rubin get in touch with you? A. He did.

Q. In what way? A. By telephone.

Q. Did he talk to you on the telephone? A. He did.

Q. Did you tell Lepke of that? A. I did.

Q. How long after you received the call? A. Same day.

Q. What did you say to Lepke? A. I just got a call from Max Rubin; he is over in the hotel.

5463

Q. Did you tell him the name of the hotel? A. That is right.

Q. What hotel was it? A. Hotel Hatfield.

Q. When you told that to Lepke, did Lepke say anything to you—that Rubin was in the Hotel Hatfield, I am talking about that conversation? A. He did.

Q. What did he say? A. He told me, "I don't know what I am going to do with him. He has got to stay away until things clear up." He also told me to give him his money.

5464

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Q. Did you turn over the money to Rubin that was coming to him? A. I did.

Q. Some time after that did Lepke have a talk with you about Rubin? A. He did.

Q. Do you remember how much later that was? A. To the best of my recollection it was about a week or so.

5465

Q. What did Lepke say to you then? A. He told me he is making arrangement to have Rubin go down to New Orleans and he also told me that Rubin was going to get in touch with me and tell me the hotel he is going to stop and the name he is going to use and Lepke was going to get in touch with some people over there to take care of him.

Q. When Lepke told you that Rubin would communicate with you and tell you the name he was using and the place he was stopping at, did Lepke give you any instructions as to what you were to do with the information? A. As soon as I received the call from Rubin I should tell Lepke the name and the hotel that he is stopping at.

5466

Q. Did you receive a telephone call from Max Rubin? A. I did.

Q. What did he tell you in that talk? A. He told me the name of the hotel he was stopping. He also told me the name that he was using.

Q. Can you remember either the name of the hotel he was stopping at or the name he was using? A. I cannot.

Q. At any rate, after you got that information, did you see Lepke? A. I did.

Q. Did you talk to him? A. I did.

Q. What did you tell him? A. I told him the

name of the hotel that he told me he was stopping, also the name he was using.

Q. You came to a point in your testimony where you had told us that Lepke said he would have some people communicate with Rubin. Do you remember that? A. That is right.

Q. Some time after you had told Lepke the name of the hotel and the name that Rubin was using in New Orleans, did Lepke speak to you again? A. He did.

Q. Can you tell us how long after that time it was that you told him the hotel Rubin was stopping at and the name he was using, if you can remember? A. The next day.

5468

Q. What did he say to you? A. He says to me, "I got in touch with them people out in New Orleans and they called up the hotel and where Max was supposed to be stopping and he is not there." He said, "I don't know what the hell I am going to do with that son of a bitch." He said, "Call up and find out what is wrong."

Q. He said call up whom? A. Call up the hotel where he was stopping.

Q. Did you call up the hotel? A. I did.

5469

Q. What information did you get? A. They told me there was a man registered there—

Mr. Barshay: I object to it. It is not in the presence of the defendant, absolutely hearsay. He is now speaking to a gentleman, your Honor, somewhere in New Orleans who has not been identified.

Mr. Turkus: Subject to a direction of Lepke to do so, and then it will be connected by the next piece of testimony.

5470

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Mr. Barshay: I don't care what that man in New Orleans said to this man. That was not pursuant to Lepke's direction.

Mr. Turkus: It was.

The Court: Sustained.

Q. After you spoke to somebody on the telephone in New Orleans, did you go and talk to Lepke? A. I did.

5471

Q. What did you tell him? A. I told him I called up the hotel and they told me there as a man registered there by that name but he checked out.

Q. Did you hear from Rubin after that? A. I did.

Q. Did he speak to you? A. He did.

Q. Was it in person or on the telephone? A. On the telephone.

Q. What did Rubin tell you?

5472

Mr. Barshay: I object to it. This is not as per instructions. It is apparently a voluntary act on the part of Rubin.

The Court: According to the evidence it is competent, the connection being sufficiently established if the jury believes it. Overruled.

Mr. Barshay: Exception.

Q. What did Rubin tell you? A. He told me he is in his home.

Q. Where was his home? A. Up in the Bronx.

Q. After you got that information from Rubin, did you see Lepke? A. I did.

Q. What did you tell him? A. I told him,

"I just received a telephone call from Max" and he asked me where he is and I told him, "He is home."

Q. And when you told that to Lepke, did he tell you to do anything? A. He did.

Q. What did he tell you to do? A. He says to me, "Meet me tonight."

Q. Where did he tell you to meet him? A. In 63rd Street and Central Park West.

Q. Do you know whether Lepke had lived in that vicinity? A. I do.

Q. Was he living in that vicinity, as far as you know, at that time? A. He was.

Q. And had you ever been to his home? A. I was.

Q. Was it a nice place?

Mr. Barshay: I object to it.

A. Yes.

The Court: Overruled.

Mr. Barshay: I withdraw the objection.

Q. You mean it was a very nice place?

Mr. Barshay: Yes or no.

A. Beautiful place.

Q. Did you meet him up on Central Park West? A. I did.

Q. Did you and he go some place? A. We did.

Q. In what kind of a conveyance? Do you understand what a conveyance is? A. No.

5476

Paul Berger—For People—Direct

Q. In what did you go some place? A. An automobile.

Q. Whose car was it? A. Mine.

Q. Who did the driving? A. I did.

Q. On the way, in the car, did Lepke talk to you? A. He did.

Q. In which direction did you drive the car? A. Towards the Bronx.

Q. On the road to the Bronx did something happen? A. It did.

5477

Q. What happened? A. Lepke got off and he says, "Go over to Max's house and pick him up and bring him over here."

Q. Did you then drive up to Max Rubin's house? A. I did.

Q. Did Rubin go with you? A. He did.

Q. Where did you drive him? A. I drove him to the corner where I dropped Lepke off.

Q. When you got to the corner, did Rubin get out of the car? A. He did.

5478

Q. Where did he go? A. It happened to be that it was raining that night and Lepke was standing under an awning and Rubin got off the car and he spoke with him.

Q. Did you see them talking together? A. I did.

Q. Could you hear what they were saying while they were under the awning? A. No.

Q. Can you give us an idea of about how long they talked together under the awning? A. I would say about ten minutes.

Q. What happened after that time elapsed? A. The both of them got into the car again.

Q. When they both got into the car, did they talk? A. They did.

Q. And by "they" I mean Lepke and Rubin.

A. They did.

Q. What did Rubin say in the car? A. I heard Rubin say to Lepke, he said, "Listen, Lep, I got to be around somewheres where I can be near my wife and kid", so Lepke says, "Well, you can't stay home. I will tell you what you will do. I'll let Paul drive you downtown and pick out some hotel and check in in that."

Q. Who was the first one that got out of the car? A. Lepke.

5480

Q. Where did you drive Rubin after that? A. Back to his home.

Q. When he got home, what did you see him do? A. Took a couple of grips, some belongings, and went down in my car.

Q. Did he take the grips and belongings into the car? A. He did.

Q. Where did you drive him, if you can remember? A. We drove downtown and I think he either checked in either the Lexington Hotel or the Shelton Hotel.

Q. Did you give Rubin his money? A. I did.

Q. Did you pep him up?

5481

Mr. Barshay: I object to it.

A. I did.

Mr. Barshay: There is an objection.

The Court: I don't know what that means. Sustained.

Mr. Turkus: He was told by Lepke to pep him up.

Mr. Barshay: That was with respect to Danny Fields, if you recall, in Saratoga.

5482

Paul Berger—For People—Direct

The Court: I don't understand the meaning of the term.

Mr. Turkus: All right, I won't bother with it, if it is not understandable.

Q. In order that we may all understand what "pep up" is, what does that mean? A. Well, to cheer him up, that he should not be worried about that they are looking for him.

5483

Mr. Barshay: Will you get who is "they", Mr. Turkus?

Q. After that did Rubin go some place? Some time after he had gone into one hotel or the other, the names of which you have given us, did he leave New York City? A. He did.

Q. Did anyone tell you whom he went away with?

Mr. Barshay: I object to it. It is hearsay.

5484

Mr. Turkus: It only calls for yes or no.

Mr. Barshay: I object to it, sir, because it is hearsay.

The Court: That concludes that what someone told him is true.

Mr. Turkus: If your Honor will only understand it, when I ask a question and I submit it is proper, that the next question will connect it.

Mr. Barshay: I press my objection, sir.

The Court: You may say yes or no.

Mr. Barshay: Exception.

A. Yes.

Q. Who told you? A. Lepke.

Q. What did he tell you? A. That he went away with Benny Levine.

Q. At that time did you have any of Rubin's money? A. I did.

Q. Was anything said about that? A. Lepke told me to give him the money.

Q. Give whom the money? A. Lepke.

Q. Rubin's money? A. That is right.

Q. How long after you were told that Rubin had gone away with Benny Levine, by Lepke, was it that you next heard from Max Rubin?

A. To the best of my recollection, about four weeks.

Q. Who told you that Rubin was back? A. Lepke told me that he was back and Rubin is going to get in touch with me.

Q. Get in touch with you? A. That is right.

Q. Did Rubin get in touch with you? A. He did.

Q. Did you meet him some place? A. I did.

Q. Where did you meet him? A. I met him on Nostrand Avenue and Eastern Parkway.

Q. In Brooklyn? A. In Brooklyn.

Q. And when you met Rubin on Eastern Parkway and Nostrand Avenue, describe how his face looked to you.

Mr. Barshay: I object to it.

The Court: Sustained.

Q. Describe his appearance.

Mr. Barshay: I object to it.

The Court: You mean disguise or something?

5488

Paul Berger—For People—Direct

Mr. Turkus: Yes, absolutely.

Mr. Barsbay: Mr. Turkus, you should not do that.

Mr. Turkus: I cannot give the Judge thought waves. When he asks me a question I must answer him.

The Court: I thought you meant expression. Under some conditions you can show normal reaction by change of expression. But you may show disguise at any time.

5489

Mr. Turkus: Naturally.

Mr. Barshay: Exception.

Q. Tell the jury about Rubin's appearance when you saw him on that corner at Nostrand Avenue and Eastern Parkway in Brooklyn? A. He was disguised and he looked very comical to me.

Q. What was the disguise that looked comical to you? A. He had a moustache and he wore glasses.

5490

Q. After you had seen Rubin with that comical appearance as you have described it, did you speak to Lepke? A. I did.

Q. What did you tell him? A. I described how funny Max Rubin looked with his moustache and his glasses and he told me to give him his money and keep peppering him up.

Q. Do you remember the time when Rubin was staying at an apartment in Brooklyn after that? A. I do.

Q. Do you know where that apartment was located, on what street in Brooklyn? Can you remember it? A. Flatbush Avenue.

Q. Was Rubin using his own name in that apartment? A. No.

Q. Do you remember the name he was using?

A. He was using some kind of a Russian name.

Q. Can you remember it? A. I could not even pronounce it at the time.

Q. Did you visit Rubin at that apartment when he was living under that unpronounceable Russian name? A. I did.

Q. Did you give him his money? A. I did.

Q. I mean unpronounceable in so far as you are concerned? A. That is right, unpronounceable for anybody that is concerned.

5492

Q. Do you remember a time when Lepke left New York City?

Mr. Climenko: If your Honor pleases, we object to this, improper, incompetent, improper in form and is leading.

The Court: Overruled.

Mr. Climenko: Exception.

(Pending question read.)

A. I do.

5493

Q. Can you tell us approximately when that was? A. Around June, 1937.

Q. Before he went away, did he say anything to you? A. He did.

Q. What did he say to you? A. That things were getting too hot, he will have to lamm.

The Court: He will have to what?

Mr. Turkus: The New York Times spells it (spelling) l-a-m-m.

5494

Paul Berger—For People—Direct

Q. Do you know a man named Simie Diesenhaus? A. I do.

Q. At that time that you have just related, was the name of Diesenhaus mentioned? A. It was.

Q. What was said by Lepke about Diesenhaus?

A. If I should want anything, I should see Simie.

Q. Was Diesenhaus an associate of Lepke?

5495

Mr. Climenko: Object to the form of the question.

Mr. Barshay: If he knows.

A. He was.

Q. Did you have dealings with Diesenhaus from that time on? A. I did.

Q. Did there come a time when you were picked up as a material witness? A. There was.

Q. When was that? A. July, 1937.

Q. Picked up by Mr Dewey's men? A. That is right.

5496

Q. Held in default of bail as a material witness in some jail in New York County? A. I was.

Q. Was bail fixed by the court upon which you could get your release as a material witness? A. There was.

Q. And to insure your appearance before the authorities in Manhattan? A. There was.

Q. What was the bail fixed? A. \$20,000.

Q. How many thousand? A. Twenty.

Mr. Barshay: May we have it clear it was not with respect to this case, Mr. Turkus?

Mr. Turkus: To the Rosen case?

Mr. Barshay: Yes. If your Honor pleases, may I address the Court?

The Court: I am just trying to think. I can see where it might be and where it might not be. Do you promise to connect it up, because if you cannot give your assurance on that point—

Mr. Turkus: Well, I have a right to submit him in his true light, and it will be connected up in another direction. It is an important fact, or I would not bring it out.

5498

Mr. Barshay: Judge, I don't want anything except—

Mr. Turkus: I won't say anything—

Mr. Barshay: I am addressing the Court, Mr. Turkus.

Mr. Turkus: I will be very guarded and wary of the record.

The Court: You can ask him whether or not he was bailed out.

Mr. Turkus: Yes.

Mr. Barshay: May I address the Court?

5499

The Court: Yes.

Mr. Barshay: I just want to know now for the record whether or not this material witness was picked up by Dewey with respect to the Rosen case or some other matter.

The Court: The Court received the impression that the answer meant picked up in one of Mr. Dewey's matters.

Mr. Barshay: Not with this case.

The Court: Mr. Dewey had nothing to do with this case.

Mr. Barshay: All right.

5500

Paul Berger—For People—Direct

Q. How long were you in jail before you were bailed out, if you can remember? A. Close to two weeks.

Q. After your release on bail, were you indicted over in Manhattan? A. I was.

The Court: In another matter?

Mr. Turkus: Naturally.

The Court: That was in a Manhattan matter?

5501

The Witness: Yes.

Q. Was bail set by the court in Manhattan? A. There was.

Q. How much bail was set? A. \$35,000.

Q. How long did you stay in before bail was put up? A. Close to two weeks.

Q. When you got out on bail, did you go to see somebody? A. I did.

Q. Whom did you go to see? A. Murray Weinstein and Sam Katz.

5502

Mr. Barshay: I move to strike it out. It is not binding on this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

Q. After that did you see any of these defendants on trial in this case? A. I did.

Q. Who? A. Mendy Weiss.

Q. Where did you see him?

Mr. Barshay: I object to it. It is not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

A. At Clinton and Broome.

Paul Berger—For People—Direct

5503

Mr. Talley: I do not hear the witness.
The Witness: Clinton Street and
Broome Street.

Q. East Side?

Mr. Cuff: Fix the time.

Q. Did you have a talk with Mendy Weiss?

Mr. Cuff: May we have the time fixed
first, Judge?

5504

The Court: Try to fix the time.

The Witness: The time or the date?

The Court: About the month. This
was 1937, you said?

The Witness: About September.

Q. What did you say to Mendy Weiss?

Mr. Barsley: I ask your Honor now
that this conversation is not binding upon
the defendant Buchalter. This is September,
1937.

5505

The Court: I will charge the jury at
the proper time.

Mr. Rosenthal: I make my objection
similar to the ones that I have heretofore
made in so far as the defendant Capone
is concerned.

The Court: Same ruling.

Mr. Rosenthal: Exception.

Mr. Talley: I object to it as being too
remote, too long after the date alleged in
this indictment, over a year after.

The Court: Overruled.

5506

Paul Berger—For People—Direct

Mr. Talley: Exception.
(Pending question read.)

A. I explained him the way I went up to Murray Weinstein and Sam Katz.

Mr. Talley: Please speak up.

5507

A. I explained him the time I went up to Murray Weinstein and Sam Katz, and I had an argument with them, and I told him, "What do you think of these guys, they wouldn't even send me down a lawyer or they wouldn't even get me bail after all what I have done for them", and Mendy says, "What are you going to do with them sons-of-a-bitch? After all we built the union for them and they won't even do a thing for us."

Q. Did Mendy say, "We built the union"?

A. That is right.

5508

Mr. Barshay: Is that the end of the conversation, Mr. Turkus?

Mr. Turkus: Just a minute—

Mr. Barshay: I have to make a motion.

Mr. Turkus: I have to see if there is anything else. That is the end of it.

Mr. Barshay: I move to strike it out with respect to the defendant Buchalter as not binding upon him.

The Court: It is not connected as far as I can see. Strike it out.

Mr. Turkus: This is a statement made by Mendy Weiss.

The Court: It had it down otherwise.

Mr. Turkus: I cannot help that.

The Court: Pardon me. He saw Weiss at the corner of Clinton and Broome and told Weiss he had an argument with Weinstein and Katz.

Mr. Turkus: Right, and now the witness has just related what Weiss said when he reported the conversation to Weiss, in substance, that Weiss said—

The Court: I am beginning to get it now.

Mr. Turkus: Those so-and-so's.

The Court: They had built up the union.

Mr. Turkus: Yes, that is what Weiss said to him.

Mr. Barshay: I am moving, your Honor, now, with respect to the defendant Buchalter: It is not binding upon him.

The Court: I will charge the jury at the proper time.

Mr. Barshay: Exception.

The Court: That is overruled. Motion to strike out is denied.

Mr. Barshay: Exception.

Q. Now, about that time were you seeing Max Rubin? A. I did.

Q. Where were you seeing Max Rubin? A. Around the clothing market.

Q. Is that on Fifth Avenue? A. That is right.

Q. And where on Fifth Avenue were you seeing Max Rubin at that time, between what streets? A. Fifth Avenue between 15th and 18th Street, I will say.

5512

Paul Berger—For People—Direct

Q. Sometime in the fall of 1937 did you have a talk with Mendy Weiss? A. I did.

Q. Where was that? A. Clinton and Broome.

The Court: Another talk?

Mr. Turkus: Yes.

Q. What did Mendy Weiss say to you on that occasion?

5513

Mr. Barshay: I object to it, sir. It is not binding on the defendant Bushalter.

Mr. Rosenthal: Same objection.

The Court: Overruled.

Mr. Talley: I object on the ground it is too remote, the fall of 1937.

The Court: Overruled.

Defense Counsel: Exception.

The Court: What did he say?

(Pending question read.)

5514

A. He told me, "We got some information that Max Rubin is squealing, and he has got to be hit."

Mr. Barshay: I move—

Mr. Turkus: He has not finished yet.

Q. You got to the point where he said, "We got some information that Max Rubin is squealing," that "he has got to be hit." A. "I want you to point him out to Schlermer (Schloime) and work with Schlermer."

Mr. Barshay: Are you finished with the answer?

Paul Berger—For People—Direct

5515

Mr. Turkus: Yes, at this point.

Mr. Barshay: I move for the withdrawal of a juror, your Honor, and declaration of a mistrial on the ground of prejudice.

The Court: Denied.

Mr. Barshay: Exception. I move to strike out the answer on the ground that it has in no way been connected up with the defendant Buchalter.

The Court: Denied.

5516

Mr. Barshay: Exception.

The Court: The Court will charge the jury on that point at the proper time.

Mr. Rosenthal: I make the same motion on behalf of the defendant Capone.

The Court: The Court will say now, as a general legal proposition, that when it comes to what is known as spoliation or fixation of evidence, that evidence on that point is applicable only to the person who does it. The Court will charge the jury specifically as applied to this case at the proper time.

5517

Mr. Talley: I move to strike out the answer as having no bearing or relevancy upon the questions now before this Court and jury for determination, as being, if anything, an attempt to bring in evidence of another crime not alleged in this indictment, so far as the defendant Weiss is concerned.

The Court: Denied.

Mr. Talley: It cannot be testified to.

The Court: Denied.

Mr. Talley: Exception.

5518

Paul Berger—For People—Direct

Mr. Rosenthal: May I ask your Honor to inform the jury now that merely because your Honor has called attention to a certain rule of evidence is no indication that there is any proof in this case that that rule is applicable to the facts here.

The Court: That is why the Court is going to charge at the proper time.

5519

Mr. Rosenthal: I am making the request now so that the jury is not under any erroneous impression as the trial proceeds, sir.

The Court: No doubt counsel are familiar with the maxim *omnia contra spoliatorem*. Counsel are referred to Chamberlain's Handbook, beginning with Section 431, on this point.

Proceed.

Mr. Talley: If your Honor pleases, I hope you bear in mind that this conversation apparently has reference to squealing in Manhattan, not anything connected here.

5520

Mr. Turkus: May Mr. Talley sum up at the right time?

Mr. Talley: You bet I will sum up at the right time.

Mr. Turkus: Then do it.

Mr. Talley: You bet I will. Don't overlook that fact. I will have something to say about your witnesses, too. I don't want any confusion here of any other crime being brought in here or any confusion between the squealing in Manhattan

Paul Berger—For People—Direct

5521

in the Dewey investigation and the crime alleged in this indictment.

The Court: The Court understands. Objection is overruled.

Mr. Talley: Exception.

Q. Tell the Court and jury what it means, "He will have to be hit." A. Get killed.

Mr. Barslay: I move to strike out the answer with respect to the defendant Buchalter on the ground it is not binding upon him and on no theory applicable to him.

5522

The Court: Denied.

Mr. Talley: I move to strike out the answer.

Mr. Barshay: And I again move for the withdrawal of a juror and the declaration of a mistrial on the ground of prejudice as against the defendant Buchalter.

The Court: Denied.

Mr. Barshay: Exception.

Mr. Talley: I move, if your Honor pleases, to strike out the answer as being this witness's interpretation of somebody else's language.

5523

The Court: Why wasn't there objection? There was sufficient opportunity to make objection.

Mr. Talley: There was not an opportunity. There was nothing in the question that it was going to elicit anything approaching that answer.

The Court: He was asked as to the

5524

Paul Berger—For People—Direct

meaning of the word. When no objection was made, I assumed it was the lingo that counsel conceded it was willing that this witness should testify to the meaning of.

Mr. Talley: No, I was not at any time willing. I move for the withdrawal of a juror and declaration of a mistrial in view of that answer.

5525

The Court: Well, for safety, notwithstanding no objection was made, the Court will strike out the witness's understanding as to the meaning of the words "have to be hit," and will instruct the jury to disregard it.

Mr. Talley: Take an exception to the denial of my motion.

Q. Now, when Mendy Weiss told you, as you have related to the jury, about Rubin squealing, "He will have to be hit," and he wanted you to work with Schlermer, did you agree to do so?

5526

Mr. Barshay: I object to it as not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception, sir.

A. I did.

Q. Do you know Schlermer's right name? A. I only know him by the name of Schlermer - Katz.

The Court: Is that the Katz who has been referred to here?

Mr. Turkus: No. The Sam Katz that was referred to here was a business agent.

Paul Berger—For People—Direct

5527

Schlermer Katz is an entirely different individual.

Q. There have been some objections here by counsel, which have consumed some time. I want to direct your attention to this: Did Weiss say anything about Schlermer Katz to you?

Mr. Barshay: I object to it. Not binding on the defendant Buchalter.

The Court: Overruled.

5528

Mr. Barshay: Exception.

Mr. Talley: I object to it as incompetent, irrelevant, immaterial to matters in this indictment, too remote.

The Court: Overruled.

Mr. Talley: Exception.

Q. Do you understand what I mean? A. Repeat that question.

(Pending question read.)

A. I did.

5529

Q. What did he say? A. He is going to have Schlermer get in touch with me.

Mr. Barshay: With respect to the defendant Buchalter I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Did you, after that talk with Mendy Weiss, meet Schlermer Katz? A. I did.

5530

Paul Berger—For People—Direct

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception, your Honor.

Q. Where was the meeting between you and Schlermer?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception, your Honor.

5531

A. I met him on Stanton and Cannon.

Q. Did you have a talk with Schlermer?

Mr. Barshay: Yes or no.

A. I did.

Q. What was said?

5532

Mr. Talley: I object to it as being immaterial, incompetent, irrelevant, not in any way binding upon the defendant Weiss, not in his presence, apparently having reference again, I submit, to another crime.

Mr. Turkus: I refer your Honor to the conversation had by Mendy Weiss with this witness.

The Court: You don't have to. I remember it.

Mr. Talley: It does not make any difference. It has nothing to do with this particular indictment here and we are here to try that.

The Court: That is what we are trying.

Mr. Talley: And no other.

The Court: Yes, sir. Your objection, however, is overruled,—

Mr. Talley: Exception.

Mr. Barshay: Now I make a motion.

The Court: —because it is properly a part of this trial. Under the law it is properly a part of this trial.

Mr. Talley: I except to that statement and submit that it is not.

The Court: All right.

Mr. Barshay: Will you hear my objection, your Honor, on another ground?

5534

The Court: Yes.

Mr. Barshay: Not binding upon the defendant Buchalter.

The Court: I will charge the jury at the proper time as to whom it is binding upon, if any.

Mr. Barshay: Exception, your Honor.

Q. What was said? A. He told me that Mendy told him to see me.

Q. Did you answer him? A. Yes, I was looking for him myself.

5535

Mr. Barshay: I still object to it on the same grounds.

The Court: Overruled.

Mr. Talley: Same objection I made before. I take an exception.

The Court: Overruled.

Q. Tell us the rest of the conversation.

Mr. Talley: I object to it upon the grounds already stated.

5536

Paul Berger—For People—Direct

Mr. Barshay: I object to it on the grounds that I stated.

The Court: Overruled.

Defense Counsel: Exception.

(Pending question read.)

5537

A. I asked him if he knows Max Rubin. He said no, and I tried to describe him to Schlermer. He said, "Well, maybe if I see him, I may know him." I says to him, "I will tell you what you will do. I have an appointment for lunch with Max Rubin over in Childs on 14th Street and University Place, at 11:30. You be in there at 11 o'clock."

11:30 I walked—

Mr. Barshay: Please. Are you finished with the answer?

The Witness: No, not yet.

Q. Finish. A. I met Max Rubin—

5538

Q. That is all right. You finished with the answer.

Mr. Barshay: I move to strike it out on the ground it is not in any wise connected with the defendant Buchalter; on the further ground that it is not binding upon him.

The Court: Denied.

Mr. Barshay: Exception.

Mr. Talley: I move to strike it out upon the grounds already urged in respect to the previous objections.

Mr. Barshay: And in respect to defendant Buchalter I further move for the

withdrawal of a juror and declaration of a mistrial.

The Court: Denied.

Mr. Barshay: Exception.

Mr. Talley: Exception to your Honor's ruling in respect to my motion.

Q. Did you, in fact, have an appointment with Max Rubin for 11:30 for lunch at Childs Restaurant on 14th Street off University Place? Was that true, that you had such an appointment? A. That is right.

5540

Q. Did you take Max Rubin to Childs Restaurant off University Place? A. I did.

Q. When you and Max Rubin went into the restaurant, that Childs Restaurant, did you see Schlermer there? A. I did.

Mr. Barshay: I object to it, your Honor. Will you give me one objection, and I won't interfere with Mr. Turkus's questions, on the ground I already set forth, not binding in any wise on the defendant Buchalter?

5541

The Court: Overruled.

Mr. Barshay: Exception. Is that agreeable to the Court—one objection instead of getting up every second?

The Court: It is difficult for the Court to assume any responsibility on that.

Mr. Barshay: Then I will have to get up, Judge.

Q. Can you remember where in the restaurant you saw Schlermer? A. About in the middle of the restaurant.

5542

Paul Berger—For People—Direct

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

The Witness: The middle of the restaurant, facing the door.

Q. Did you have lunch there?

Mr. Barshay: Same objection.

The Court: Overruled.

5543

Mr. Barshay: Exception.

A. We did.

Q. Did Max Rubin eat with you? A. He did.

Q. Do you remember how long you spent in the restaurant with Max Rubin?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. About an hour.

5544

Q. Did you leave the restaurant with Max Rubin?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. Did you later have a further talk with Schlermer?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. When was that? A. Same day, same night.

Mr. Talley: May I get the date of that day and night?

Mr. Turkus: It is fixed. It is on the record.

Mr. Talley: Will you ask him, please?

Mr. Turkus: No, I won't. It is on the record, and I am not going back.

Mr. Talley: May I have the time fixed upon this conversation, if your Honor pleases?

5546

The Court: He said he had another talk with Schlermer that night.

Mr. Talley: What night is the witness referring to, is my question.

The Witness: The night that I ate in the restaurant.

Mr. Talley: What night, what month, what day of the week?

Mr. Turkus: Just a minute. I am conducting the—

Mr. Talley: I am asking the Court.

5547

Mr. Turkus: —the direct examination. The time has been properly fixed in chronology, and I object to any cross-examination in the middle of direct examination.

Mr. Talley: I am asking your Honor to have the time fixed by this witness, the District Attorney having refused to do it.

The Court: He has testified that he had another talk with Weiss at Clinton and Broome.

Mr. Talley: I am asking if I can have the time definitely fixed. Will your Honor

5548

Paul Berger—For People—Direct

ask this witness what month he is referring to?

The Court: Please wait a minute. And he then met Schlermer at Stanton and Cannon, but there is nothing in the record as to what month or approximately what part of any month this occurred.

(To the witness) Can you place that in any way as to time, Mr. Witness?

5549

Q. Your best recollection. A. Either the end of September or the beginning of October.

The Court: You think that was it?

The Witness: Yes, sir.

Q. It was the same night that you had that further talk with Schlermer? A. I did.

Q. What did Schlermer say and what did you say? A. He told me that he lost Max Rubin, and he asked me where he can pick him up and what is the best time to pick him up. I told him to be around the clothing district on Fifth Avenue between 15th and 18th Street, to be there about 10:30, usually pick him up about 10:30 to 12.

5550

Mr. Barshay: I move to strike out the answer as not binding on defendant Buchalter.

The Court: Denied.

Mr. Barshay: Exception.

Q. You were familiar with Mr. Rubin's transaction of business and the places that he went customarily in the market? A. That is right.

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5551

Q. And by that I refer to the streets that he customarily walked on. A. That is right.

Q. And at times when he would be at certain corners. A. Right.

Q. After that talk with Schlermer, did you speak to Schlermer again? A. I did.

Q. When was that? A. The next day.

Q. What was said on that occasion?

Mr. Barshay: I object to it.

The Court: Overruled.

5552

Mr. Talley: Same objection that I made previously.

The Court: Overruled.

Defense Counsel: Exception.

A. He told me he picked up Max Rubin up on Fifth Avenue and he had Cuppie with him and they tailed him down to the Woolworth Building—at that time Dewey was the Special Investigator—and they waited there about an hour and they seen Max Rubin come downstairs and walk down to the subway, and they followed him home. He also told me that he has got to pick him up again tomorrow around the clothing market and when he goes into the subway to go home, he has got to get in touch with somebody in the Bronx.

5553

Mr. Talley: I move to strike that out, your Honor, on the ground heretofore set forth.

The Court: Denied.

Mr. Talley: Exception.

Q. Do you know Cuppie's right name? A. No.

5554

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Q. Does the name Jack Migden mean anything to you, or Jacob Migden? A. I think that is it.

Q. You think it is Cuppie? A. That is right.

Q. In that talk did Schlermer tell you who in the Bronx he was supposed to telephone and report when Rubin got in the subway train to go home?

Mr. Barshay: I object to it.

5555

A. No.

Mr. Talley: I object to it on the ground it is incompetent, irrelevant, immaterial, has no binding effect upon the defendant Weiss.

The Court: Overruled.

Defense Counsel: Exception.

A. No, he did not tell me who, but he told me they got to time it how long it takes when he goes into the subway, when he goes home. He has to get in touch with some-body but he didn't tell me whom he has got to get in touch with.

5556

Mr. Talley: I move to strike out the answer on the grounds heretofore urged.

The Court: Overruled.

Mr. Talley: Exception.

Q. Sometime after that did you read about an accident happening to Mr. Rubin?

Mr. Barshay: I object to it.

Mr. Talley: I object to it.

The Court: Sustained.

Mr. Barshay: I move for the with-

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drawal of a juror and the declaration of a mistrial.

The Court: Denied.

Mr. Barshay: Exception.

Mr. Rosenthal: Same exception.

The Court: It is sustained because what you read in a newspaper is hearsay; it is not evidence.

Mr. Turkus: I only wanted a yes or no answer.

Mr. Talley: It does not make any difference what you want.

5558

The Court: Even that is dangerous.

Mr. Turkus: I won't pursue it at that point.

Q. How long after, if you can recall, after you were told by Schlerner what you just related to the jury, was it that you saw Mendy Weiss again?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

5559

Q. Do you understand the question? A. Repeat that question.

(Question read.)

A. Quite some time after Rubin was shot.

Mr. Talley: I move to strike out that answer.

The Court: Strike it out.

5560

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Mr. Talley: And ask that the jury be directed to disregard it.

The Court: The jury is directed to disregard it.

Mr. Talley: And I move for the withdrawal of a juror and a mistrial.

The Court: Denied.

Mr. Talley: Exception.

Mr. Barshay: I make the motion for the withdrawal of a juror and the declaration of a mistrial, and I join in the other motion Judge Talley made.

5561

The Court: Denied.

Mr. Barshay: Exception.

Mr. Rosenthal: May I have the same motion and exception?

Mr. Barshay: Exception to all counsel.

The Court: Same ruling.

Q. Tell the Court and jury what Mendy Weiss said to you.

5562

Mr. Barshay: I object.

The Court: You asked him how long after. That means days, weeks or months. Was it a few days, a few weeks or a few months between the time you left Schlermer the last time?

The Witness: I would say a couple of months.

The Court: You saw Weiss a couple of months later?

Q. Tell us what Mendy Weiss said to you.

Mr. Talley: Objected to.

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5563

The Court: Overruled.

Mr. Barshay: I object to it. It is not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

(Question read.)

A. He said to me, "Look at that lucky son-of-a-bitch, he gets hit in the head and he is still alive."

5564

The Court: Louder.

The Witness: "Look how lucky the son-of-a-bitch is. He gets hit in the head and he is still alive, but we will catch up with him yet."

Mr. Barshay: I move to strike out the answer as not binding on the defendant Buchalter.

The Court: Denied.

Mr. Barshay: Exception. I move for the withdrawal of a juror and the declaration of a mistrial on the ground of absolute prejudice.

5565

The Court: Denied.

Mr. Barshay: Exception.

Mr. Talley: Same motion on behalf of the defendant Weiss.

The Court: Same ruling.

Mr. Talley: Exception.

Mr. Rosenthal: Exception.

The Court: Same ruling.

Q. Some time after Mendy Weiss told you what you have just told this Court and jury, did you see him again; yes or no? A. Yes.

5566

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Q. How long after that when he told you about how lucky, et cetera, et cetera? A. To the best of my recollection, about six or seven months.

Q. What happened at that time?

Mr. Barshay: I object to the form of the question.

Mr. Talley: I object to it as being incompetent, irrelevant and immaterial, too remote.

5567

The Court: It is too general. (To Witness) You saw Weiss six or seven months later?

The Witness: That is right.

Q. Did you go some place with Mendy Weiss?

A. He asked me to take a ride with him.

Q. And did you ride with him? A. I did.

Mr. Barshay: Objected to. It is not binding on the defendant Buchalter.

The Court: Overruled.

5568

Mr. Barshay: Exception.

Q. Who drove the car?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. Mendy.

Q. Where did he drive you to?

Mr. Barshay: Same objection, your Honor.

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5569

The Court: Overruled.

Mr. Barshay: Exception.

A. Saratoga and Livonia.

Q. In Brooklyn? A. In Brooklyn.

Q. The Brownsville corner? A. That is right.

Q. Whom did you meet there?

Mr. Barshay: Same objection.

A. Pittsburg Phil Strauss.

5570

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. After you met Pittsburg Phil Strauss there, did you and Mendy Weiss go some place?

A. We did.

Mr. Barshay: Same objection.

Q. Where did you go?

5571

The Court: Did Strauss go with you?

The Witness: He did.

The Court: All went?

The Witness: That is right.

Q. Who went?

Mr. Barshay: Did your Honor rule?

The Court: Overruled.

Mr. Barshay: Exception.

5572

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Q. Where did you go? A. Went over to Louis Cohen's house.

Q. Who were the ones that went to Louis Cohen's house? A. Myself, Mendy Weiss and Pittsburg Phil Strauss.

Q. How long did you, Mendy Weiss and Pittsburg Phil Strauss stay in Cohen's house?

5573

Mr. Barshay: I object to it, not binding on the defendant Buchalter.

The Court: You mean Louis Cohen or Philip Cohen?

The Witness: Louis Cohen.

The Court: Where is his house?

The Witness: Somewhere off Kings Highway.

The Court: Objection overruled.

Mr. Barshay: Exception.

(Question read.)

A. About an hour.

Q. Did the three of you leave, that is, you, Strauss and Mendy Weiss leave?

5574

Mr. Barshay: Same objection.

A. We did.

The Court: Same ruling.

Mr. Barshay: Exception.

Q. Did you get into the car?

Mr. Barshay: Same objection.

A. We did.

Q. In the car did Mendy Weiss say anything to you?

Mr. Barshay: I object to it, not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

A. He did.

Q. What did he say to you?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. He asked me if I know that Seymour Magoon.

Q. What did you say when he asked you if you knew Seymour Magoon?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

Q. I did not hear you. A. I was not positive that I knew him and he started to describe him to me.

Mr. Barshay: I object to it and move to strike out the answer.

Mr. Turkus: Let him finish his answer.

Mr. Barshay: He dropped his voice and I thought he did.

Q. Finish your answer and then we will objections. A. He tried to describe him to me and

5578

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I said, "Maybe if I will see him I may know him." He says, "I tell you what I want you to do." He said, "I want you to point out Max Rubin to Magoon. This time the son of a bitch ain't going to be so lucky." Then he says to me, "Be over in Ratner's restaurant—that is located on Delancey Street and Suffolk Street—at 9:30 in the morning and Magoon will be there and I will have Cuppie there with him."

5579

Mr. Barshay: I move to strike out the answer, your Honor, as it is binding on the defendant Buchalter.

The Court: Denied.

Mr. Barshay: Exception. I move for the withdrawal of a juror and the declaration of a mistrial on the ground of prejudice.

The Court: Denied.

Mr. Barshay: Exception.

Mr. Talley: I move to strike it out, if your Honor pleases, upon the ground that it has to do with a crime entirely distinct and remote from the crime named in this indictment.

5580

The Court: Denied.

Mr. Talley: I join in the motion for the withdrawal of a juror and a mistrial. Take exception to your Honor's both rulings.

The Court: Denied.

Mr. Talley: Exception.

Mr. Rosenthal: Exception.

Mr. Barshay: At the same time, your

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5581

Honor, may we have the date of this conversation, if possible.

The Court: About when was it?

Mr. Turkus: The witness has already fixed the time.

The Court: He said about two months after the previous occasion.

Mr. Turkus: May I continue with my direct? I fixed the time properly enough for the record. If there is any cross-examination, it can be done without breaking up the direct.

5582

The Court: All right, go ahead.

Q. Is that Cuppie the same Cuppie that Schildermer was talking about? A. That is right.

Mr. Barshay: I object to it.

Q. After Mendy Weiss gave you those instructions, did you go to Ratner's restaurant the following morning? A. I did.

Mr. Barshay: I object to it.

5583

The Court: Overruled.

Mr. Barshay: Exception.

Q. Whom did you meet in Ratner's restaurant?

Mr. Barshay: Same objection, your Honor.

The Court: Same ruling.

Mr. Barshay: Exception.

A. I met Magoon and Cuppie.

5584

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Q. By Magoon you mean Seymour Magoon?

A. That is right.

Q. When you saw Magoon there with Cuppie, did you recognize him?

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

5585

Q. Was he one of the boys from Brownsville?

Mr. Barshay: I object to it, sir, not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

A. He was.

Q. Now, did you, Magoon and Cuppie talk together?

Mr. Barshay: I object to it.

The Court: Overruled.

3586

Mr. Barshay: Exception.

A. We did.

Q. What was said?

Mr. Talley: Objected to, if your Honor please, on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Barshay: I object to it on the ground I heretofore urged.

The Court: Overruled.

Defense Counsel: Exception.

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5587

A. I spoke over with him the best way to point Max Rubin out to Magoon.

Q. Tell us what you told him, what was the best way to point him out?

Mr. Barshay: I object to it.

A. I told him that they should meet me over 16th Street and Union Square.

Q. Whom did you tell to follow you down to Union Square and 16th Street? A. Cuppie was with me and Magoon followed me up in another car.

5588

Mr. Barshay: I object to it, your Honor, and move to strike out the answer. I asked Mr. Turkus, to have one objection and I would not interrupt you but the Court would not allow it and I cannot help it. If the Court will allow it, I will sit down with one objection.

Mr. Turkus: I am only the prosecutor.

Mr. Barshay: I don't want to interrupt Mr. Turkus except I want to record my objection.

5589

The Court: The Court does not say it won't allow it. The Court says you will have to assume the responsibility as to the extent and number to which your objection and exception may go because if the Court assumes the responsibility, that will put over on the Court the burden of watching for objectionable points and doing the work that should properly be done by counsel. That is not the best procedure.

5590

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Mr. Barshay: Then, your Honor, I will have to do it as I have been doing.

The Court: Use your judgment.

Mr. Talley: I move to strike out the answer.

The Court: Denied.

5591

Mr. Talley: As having no bearing whatever or relation to defendant Weiss, not in his presence or hearing, and I am warning your Honor with all the earnestness that I can that we are now delving into the alleged commission of another crime entirely distinct and apart from the indictment that we are here to answer.

The Court: The Court is quite alert to its duties, but thank you for the warning nevertheless.

Mr. Talley: Perhaps your Honor, being alert to your duties, will rule on my motion.

The Court: Yes, I had already said "overruled" when you went on.

5592

Mr. Talley: I take an exception. I have done all I could to make plain what is in my mind.

The Court: All right.

Mr. Rosenthal: I do not want to make any objection but I want to see whether I understood your Honor properly at the outset of this testimony. I asked in so far as this witness was concerned that if the testimony was not applicable to my client, whether I could have a general objection and exception to the particular line without interrupting, and I understood your Honor said yes.

The Court: Certainly. I am going to instruct the jury at the proper time in the law as to whom this is applicable.

Mr. Rosenthal: That is the reason why I have not gotten up to object.

The Court: And I have even gone to the extent of stating in a brief and preliminary way to the jury generally the law on that point.

Mr. Rosenthal: I thought that I had understood your Honor correctly.

5594

The Court: I am trying to see you are not prejudiced. At the same time the Court cannot prejudice the case by making a ruling limiting the application of evidence in the absence of the possible connecting up of the evidence at a later stage of the trial with other defendants than is now indicated by the record.

Mr. Rosenthal: That was my theory, that your Honor and I had agreed on that particular point.

The Court: I think we understand one another.

5595

Mr. Rosenthal: All right.

Mr. Barshay: I will do the same as Mr. Rosenthal, one objection and one exception to this line of inquiry.

The Court: Yes.

Q. In view of the series of objections that were made here, I want to direct your attention to this: At the time when you were talking over with Magoon and Cuppie the best way to point out Rubin, did you tell them anything about speaking to you? A. I did.

Q. What did you say?

5596

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Mr. Talley: That is objected to, in competent, irrelevant, immaterial.

The Court: Overruled.

Mr. Talley: Exception.

A. I told them not to talk to me because I am very well known around there.

Q. Very well known around where? A. The clothing market.

Q. That is what you said to Magoon and Cuppie? A. That is right.

Q. Now we got to the point where you started out to point him out. A. That is right.

Q. Where did you go to point out Max Rubin on this occasion? A. We walked down—we got off our cars on 16th Street and Union Square, and they followed me down towards 5th Avenue.

Q. So the jury will understand it, did you walk first? A. I did.

Q. Who walked behind you? A. Magoon walked behind me and Cuppie was following Magoon.

Q. Now, in that formation, or in that way, where did you walk? A. We walked down toward 5th Avenue. I walked up a block and I spotted Max Rubin.

Q. Where did you spot Max Rubin? A. On the opposite side from where I was.

Q. Where were you then when you spotted him? A. On 17th Street and 5th Avenue, and he happened to be standing near a candy store right opposite me.

Q. When you spotted Max Rubin in that location, what did you do or what did you say? A. I walked over to Magoon. I says, "There's the

fellow, standing across the street, the fellow with a stiff neck, standing with somebody else there."

Q. When you said that to Magoon, describe to the jury how you said it to him. A. As he was standing, he was watching me. I walked back. I said to Magoon, "There he is on the other side, the fellow with the stiff neck, talking to the other fellow on the corner."

Q. At that time did Rubin have a stiff neck? A. He did.

Q. After you had pointed out Rubin in that fashion to Magoon, what did you see Magoon do? A. I seen him cross over to the side where Max Rubin was standing, and he stood there. Then I walked away.

5600

Q. After you had pointed out Rubin to Magoon, this Seymour Magoon, did you talk to Mendy Weiss again? A. I did.

Q. Where did you have the talk at that time? A. Over in the bar and grill on Lewis and Grand Street.

Q. How long after you had pointed out Max Rubin was that, after you had pointed him out to Magoon? A. To the best of my recollection, about two weeks.

5601

Q. What did you say to Mendy Weiss?

Mr. Talley: Objected to, if your Honor pleases, incompetent, irrelevant, immaterial.

The Court: Overruled.

Mr. Talley: Too remote.

The Court: Overruled.

Mr. Talley: Exception.

A. I said, "What is happening with Max?"

5602

Paul Berger—For People—Direct

Q. What did Mendy say to you? A. Mendy says to me, "What is the matter with you? We got to be very careful. He is with a cop and we don't want to hit a cop, so we got to be very careful how are we going to hit him."

Q. What does the expression mean, to be "hit"?

Mr. Talley: Objected to, if your Honor pleases.

5603

A. To get shot.

The Court: You can qualify him on those terms.

Mr. Turkus: He is an expert.

Mr. Talley: Expert spotter.

Q. Are you familiar with the expressions used by the underworld? A. I am.

Q. Have you heard it for years, these expressions? A. I did.

5604

Q. Are you an expert in the use of the language? A. I am.

Q. What does the expression, to be hit, mean in the underworld? A. Shot.

Mr. Talley: I object, if your Honor please.

Q. What was the answer? A. Shot.

The Court: Strike that out. The objection is sustained. He cannot say he is an expert.

(To Witness) How long have you

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5605

been familiar with the word, as you used it, "hit"?

The Witness: About fourteen or fifteen years.

The Court: Is it common lingo?

The Witness: It is.

The Court: In the market there, among your group?

The Witness: That is right.

The Court: You may answer.

Mr. Talley: Exception.

5606

Q. Tell us what it means. A. It means shot.

The Court: Just what did he say about that? He said he was being followed by a cop?

The Witness: No, he said he is with a cop and we have to be careful, we don't want to hit the cop, too.

Q. At that time did you know that Rubin was under police protection? A. I did.

Q. Was he under police protection when you fingered him to Seymour Magoon in the clothing district? A. He was.

5607

Q. After Mendy Weiss told you about not wanting to hit the cop with Rubin, did you see Magoon in the East Side of Manhattan? A. I did.

Q. Where did you see him? A. I seen him talking to Mendy Weiss.

Q. Where was he talking with Mendy Weiss?
A. On Lewis and Grand Street.

Q. Is that a hangout there, Lewis and Grand?
A. It was at the time.

5608

Paul Berger—For People—Direct

Q. Describe the dress, or clothes, rather, that Magoon wore on that occasion when you saw him talking with Mendy Weiss on Lewis and Grand Street. A. He was dressed like a laborer.

Q. Did he have on overalls? A. He did, with a flannel shirt.

Q. That was not the usual manner of dress of Seymour Magoon, was it? A. Absolutely not.

Q. That was something unusual? A. That is right.

5609

Q. After Mendy Weiss and Magoon got through talking, did you walk over to Magoon? A. I did.

Q. Did you talk to Magoon? A. I did.

Q. What did you say to him? A. I asked him what is the idea of dressing up the way he did. He says to me, "Listen, I am casing Max; around where he lives there happens to be some construction work going on there and I don't want to be spotted, so I dresses up like one of the laborers."

Q. Tell us what does "casing" mean. A. Watching.

5610

Q. That is watching and observing his movements? A. That is right.

Q. Preliminary to doing something? A. Right.

Q. Tailing him, timing him? A. Right.

Q. Do you remember some time in May, 1940, reading a newspaper; yes or no? A. Yes.

Q. Do you remember reading something in the newspaper about one Albert Tannenbaum, or Allie Tannenbaum; yes or no? A. Yes.

Q. Did you know Albert Tannenbaum? A. I did.

Q. Was he an associate of Lepke? A. One of Lepke's men.

Q. Was he generally called Allie? A. He was.

Q. After you read something in the newspaper about Allie Tannenbaum, did you have a talk with Mendy Weiss? A. I did.

Q. Where did you have that talk with him? A. Met him in Williamsburg.

Q. Williamsburg, Brooklyn? A. That is right.

Q. What was said by Mendy in that conversation?

5612

Mr. Cuff: May we have the time fixed?

Mr. Turkus: This is May, 1940, about.

Mr. Cuff: May we have the time fixed, Judge, by the witness, not by Mr. Turkus?

The Court: Yes. How long after this talk with Tannenbaum did you talk to Weiss?

Mr. Turkus: No, there is no talk with Tannenbaum.

The Court: I thought he said he talked with Tannenbaum.

Mr. Turkus: No, he read something in the newspapers.

Mr. Talley: In May, 1940. Now, he asked about a talk he had with Weiss, and we are asking that that time be fixed.

The Court: How long after you read, did you talk with Weiss?

The Witness: About the next day.

5613

Q. What did Mendy Weiss tell you over in Williamsburg?

5614

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Mr. Talley: Same objection as made before, if your Honor pleases.

The Court: Overruled.

Mr. Talley: Apparently has reference to the same happening, matter not referred to in the indictment.

The Court: Overruled.

Mr. Talley: Exception.

A. "It looks like Allie is talking."

5615

Q. Yes. Open up your mouth when you talk, so we can hear you. A. "It looks like Allie is talking and I will have to duck. If you want anything, get in touch with Shimmy."

Mr. Talley: I move to strike that out upon the grounds already urged, no reference to any matter in the indictment.

Mr. Barshay: It appears apparently that Mr. Turkus has left the theory of spoliation, so I want to renew my motion to strike out the testimony.

5616

The Court: So far as the Court understands, so far as the Court sees at the present moment, that is so.

Mr. Barshay: Then I move to strike out all this man's testimony.

The Court: I would like to inquire of Mr. Turkus if he can completely—

Mr. Turkus: I don't hear you.

The Court: Can you tell me what you are driving at?

Mr. Turkus: Did you hear his answer?

The Court: Yes, sir. I am asking you a question.

Mr. Turkus: Flight.

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5617

Mr. Barshay: As against whom?

Mr. Turkus: Mendy Weiss says to this man, "It looks like Allie is talking. I have got to duck. You get in touch with Shimmy."

The Court: The Court understands that perfectly. From what crime?

Mr. Turkus: From this.

The Court: From what crime?

Mr. Turkus: From the killing of Rosen.

The Court: How do you connect Allie Tannenbaum with that knowledge?

5618

Mr. Turkus: We will unfold that. We will have Allie Tannenbaum here to tell the jury.

The Court: You mean you intend to connect it?

Mr. Turkus: Of course.

The Court: Let it stand.

Mr. Talley: Exception.

Mr. Turkus: I am sorry. I did not mean to have a petulant tone of voice.

The Court: I could not recall where Allie Tannenbaum had been shown to have any knowledge of the Rosen murder and I could not figure what Weiss was ducking from, whether it was that or something else, whether it was possibly the Dewey general investigation. That would be incompetent, but upon your promise to connect it up, we will let the answer stand.

5619

Mr. Barshay: Will your Honor listen to my motion?

Mr. Turkus: If you recall, on Rubin's cross-examination, counsel for Lepke

5620

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brought out something about Allie Tannenbaum.

The Court: I remember that.

Mr. Turkus: You will hear from Allie Tannenbaum later on.

Mr. Barshay: Will you rule on my motion first to strike out this testimony?

The Court: Denied.

Mr. Barshay: May I make a motion?

The Court: I thought you made the motion.

5621

Mr. Barshay: Yes, I was making the motion. Mr. Turkus, apparently having left the theory from this witness about spoliation, I want to make a motion to strike out all his testimony he gave in support of that theory as not binding upon the defendant Buchalter.

The Court: Denied.

Mr. Barshay: Exception. I object to this line of inquiry because this has in absolutely no way any tendency to connect the defendant Buchalter.

5622

The Court: It is in the record. If it is not connected up, the Court will strike it out later. As this time it is denied.

Mr. Barshay: Exception.

The Court: Thereby avoiding the necessity of bringing this witness back if it is connected up, and if it is not connected up, no harm is done, because to duck from something else has no evidentiary value in this case. I am sure the jury will not be prejudiced by that.

Mr. Barshay: The point I make is that

the flight of one defendant is not binding upon any other defendant. That is my point.

The Court: I understand that perfectly. The jury will be so instructed, but I cannot strike out the evidence at this time.

Mr. Talley: I take exception.

The Court: I mean I shan't.

Q. I think prior to these objections, and so that we get back at the point of testimony that we were at, did you say in substance that Weiss said in substance, "It looks like Allie is talking," and that he, Weiss, will have to duck, and if anything comes up, if you want anything, to get in touch with Shimmy? A. That is right.

Q. Did you know Shimmy? A. I did.

Q. Was he one of Lepke's men? A. He was.

Q. After Mendy told you he would have to duck, did you ever see him again before you came to court? A. I did not.

Q. When were you picked up by District Attorney O'Dwyer? A. Around June 5, 1941.

Mr. Rosenthal: That is objected to, if the Court pleases, nothing to show he was picked up.

Mr. Turkus: Nothing to show he was picked up?

Mr. Rosenthal: No.

Mr. Turkus: We got him here.

Mr. Rosenthal: He might have walked in.

Mr. Turkus: You be patient.

5626

Paul Berger—For People—Direct

Mr. Rosenthal: Don't worry about me. I have been patient for a number of weeks. I still object to the question.

The Court: Overruled.

Mr. Rosenthal: Exception.

Q. And were you arrested and charged with murder in the first degree, the murder of Rosen, your part of it? A. I was.

Q. Went to jail? A. I did.

5627

Q. No bail? A. No bail.

Q. After that did you ask to see Judge O'Dwyer? A. I did.

Q. Did you see Judge O'Dwyer? A. I did.

Q. Did you have a full talk with Judge O'Dwyer?

Mr. Rosenthal: I object to the characterization; whether he had a full one is what the jury will determine, not Mr. Turkus.

The Court: Sustained.

5628

Mr. Rosenthal: Or Judge O'Dwyer either. We had that question asked of Mr. Bernstein also.

Mr. Turkus: Have you finished, Mr. Rosenthal?

Mr. Rosenthal: I made my objection. The Court has sustained it.

The Court: The objection is sustained for the reasons stated.

Q. Did you have a talk with Judge O'Dwyer? A. I did.

Q. You were taken out of jail after the talk? A. I was.

Q. Put into a hotel? A. That is right.

Q. Custody of the New York City Police Department? A. That is right.

Q. Twenty-four hour police guard? A. That is right.

Q. Still in the hotel? A. That is right.

Q. Still under 24 hour police guard? A. That is right.

Q. Were you taken before a Grand Jury and did you testify about the Rosen killing? A. I did.

5630

Mr. Turkus: The witness is offered for cross-examination.

Mr. Rosenthal: Before any cross, if your Honor pleases, so as to have the record straight, I now move for a mistrial and withdrawal of a juror in so far as the defendant Capone is concerned since it now appears affirmatively that in no wise is any of the testimony of this witness related to that defendant and the testimony in so far as he is concerned is highly prejudicial to his rights and interests to a fair trial.

5631

The Court: Denied.

Mr. Rosenthal: I respectfully except, sir.

Mr. Barshay: I make a motion with respect to the defendant Buchalter for the withdrawal of a juror and the declaration of a mistrial on the ground that the latter part of the testimony with respect to spoliation and flight is highly prejudicial to him.

5632

Paul Berger—For People—Direct

The Court: Denied.

Mr. Barshay: Exception.

Mr. Talley: I make the same motion with respect to the defendant Weiss, if your Honor pleases.

The Court: Denied.

Mr. Talley: Exception.

5633

The Court: Gentlemen, I want to be reasonable with counsel and I want counsel to be reasonable with the Court. It is obvious that after the direct examination of this witness, defendants' counsel are entitled to an opportunity to properly prepare for cross-examination. I had intended to hold a Saturday session but if I do it will give the appearance of suddenly pushing the case to the disadvantage of the defense and I won't give the case that complexion so we will have no Saturday session, but I am going to ask counsel between now and Monday to decide and let me know on Monday one of two alternatives: Shall we sit later hours or shall we hold Saturday sessions. Don't answer that now. It is one or the other.

5634



Gentlemen of the jury, please don't discuss the case, let nobody talk to you about it, keep your minds open. Remember each and every other admonition heretofore given, both orally in court and in the instructions given to the chief court officer concerning your demeanor. We will resume this trial at ten o'clock Monday and the Court expresses the wish that we shall all of us try to be promptly on hand so we can start the case promptly at ten

Paul Berger—For People—Direct

5635

o'clock each morning. We will do quite a bit more work. I think most of the trial as far as the prosecution is concerned may be over. Ten o'clock Monday morning.

The witness may leave first.

The jury by the other door.

Remand the defendants.

Mr. Talley: Will your Honor direct that I may have an opportunity for a very brief time to consult now in the pen with my client?

5636

The Court: I gave that right to all counsel every day. That is understood. That is to avoid the necessity of any trips to their places of confinement.

Defendants are remanded.

(Thereupon an adjournment was taken to Monday, November 10, 1941, at ten a.m.)

5637

5638

Paul Berger—For People—Direct

Brooklyn, N. Y., November 10, 1941.

TRIAL RESUMED

PAUL BERGER, a witness in behalf of The People, resumed the stand and testified further as follows:

5639

Mr. Turkus: I am not seeking to reopen the direct examination, but I want to go only to the extent of asking this witness to identify two individuals.

The Court: All right.

By Mr. Turkus:

Q. Will you identify this man, please? A. Yes, sir, that is Murray Weinstein, manager of Local No. 4, also executive board member of the General Executive Board of the Amalgamated.

Q. Can you identify this man (indicating)? A. Sam Katz, business agent of Local 4, New York Clothing Cutters Union.

5640

Mr. Turkus: Mr. Weinstein having been previously identified by Rubin, I ask that this man identified as Katz state his name for the record.

The Party Addressed: Sam Katz, 1045 Anderson Avenue, Bronx.

Mr. Barshay: We subpoenaed some police records. I understand they were brought to court by a police officer the other day and the officer turned them over to Mr. Turkus. May we have them, please?

Mr. Turkus: What are they?

Mr. Barshay: Police records indicating surveillance in New York County of the defendant Buchalter by the Police Department. The police officer who came here the other day did not bring the records, your Honor, but he did explain to Mr. Clinenko, my associate, that he was here pursuant to subpoena, and he was told to deliver to Mr. Turkus the record. It had already been in his possession for a considerable time. Those are the records I have reference to.

5642

Mr. Turkus: The records are in court, but counsel for the defendant Lepke will have to proceed according to law with respect to those records.

Mr. Barshay: I am proceeding according to law: I subpoenaed them by an order signed by your Honor. I subpoenaed them and I would like them.

Mr. Turkus: A subpoena does not warrant the turning over by the Police Department of D.D. 4's and D.D. 5's, to counsel for the defendant.

5643

The Court: That is right.

Mr. Barshay: Mr. Turkus should not have them in his control then. Whether or not the D.D. 4's have anything to do with this case, they are only concerning the movements of the defendant Buchalter in the years 1935, 1936, and 1937 in Manhattan, and have absolutely no bearing upon this case.

The Court: I know nothing about it.

5644

Paul Berger—For People—Direct

All I know is what the law purports to be. You know how to proceed, with a subpoena duces tecum.

Mr. Barshay: I complied with every phase of the law.

The Court: Please. If you wish you can have it marked for identification and then offer it in evidence, and if there is an objection, the Court will rule.

5645

Mr. Barshay: May we have them marked for identification? I have only information, in reply to Mr. Turkus's question, that the police officer told that to Mr. Chimenko in the hall the morning he was here, November 8th.

The Court: Is there a dispute about it now?

Mr. Turkus: I am checking through the records to see if we have such a record.

The Court: If Mr. Klein were here, he would probably know.

Mr. Turkus: Mr. Joseph takes care of all records.

5646

The Court: Do you know anything about it, Mr. Joseph?

Mr. Joseph: All we have is the original D.D. 5' and that is not part of the Rosen record.

Mr. Barshay: I don't want it at this time.

The Court: Instead of making a statement before the jury, proceed according to law. Put your policeman on the stand and see if he knows what he is talking about.

Mr. Barshay: The policeman was ex-

cused by Mr. Turkus, he is not here. I will have to get him again.

The Court: I am not interested in that. Nobody's subpoenas can be excused by counsel for either side, and you should not make such a hearsay statement before this jury.

Mr. Barshay: I take an exception, because I am telling you what the officer said.

The Court: You do not have to raise your voice and shout your exception.

Mr. Barshay: May the record show that counsel has not raised his voice, nor has counsel shouted to the Court, but that counsel is talking in a regular tone and in his ordinary voice.

The Court: The Court states on the record that you are not telling the truth.

Mr. Barshay: I take an exception to that. Not even the Court is going to say that to me.

The Court: Sit down and behave yourself.

Mr. Barshay: I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Denied.

Mr. Barshay: Exception.

The Court: Cross-examination first on behalf of Buchalter.

Cross-examination by Mr. Barshay:

Q. Can you tell us where you were born? A. Poland.

5650

Paul Berger—For People—Cross

Q. Are you a citizen of the United States?

A. I am not.

Q. Did you register as an alien? A. I did.

Q. Can you tell me when? A. A few months ago.

Q. Can you tell me where? A. Up in the District Attorney's office.

Q. In Brooklyn? A. That is right.

Q. You mean you registered as an alien in the District Attorney's office? A. I did.

5651

Q. Can you tell us the time, please? Was it since your arrest? A. That is right.

Q. Do you know when the law allowed for registration period, between when registration began and registration ended? A. I did.

Q. You did not register within those times? A. I did not.

Q. So it was only after June 5, 1941, when you were arrested in this case by the District Attorney's office and the police? A. I thought I was a citizen.

5652

Q. (continued) That for the first time you declared yourself as an alien? A. Through questioning by the District Attorney, I presumed I was a citizen, through questions.

Q. You never applied, Berger, for citizenship papers, did you? A. No, sir, I was under the impression my father was a citizen, and being that I was in the Army, naturally I thought I was.

Q. Now, when for the very first time were you questioned in this case? A. When I was first arrested.

Q. That was June 5, 1941? A. That is right.

Q. You have lived in the City of New York all the time since 1936 or before that? A. I did.

Q. So that, going back to sometime before September 11, 1936, you used your own name, Berger, Paul Berger? A. That is right.

Q. You lived with your family? A. That is right.

Q. And your son used his own name, Berger? A. That is my name.

Q. He used that name too? A. Yes, sir.

Q. Where did you live? A. At what time?

Q. About 1936. A. 1936—at No. 96 East 54th Street.

Mr. Turkus: I object Manhattan?

The Court: The jury and counsel are all entitled to hear what you say. Speak loudly.

Q. Was it in Brooklyn or Manhattan? A. In Brooklyn.

Q. Did you have a telephone? A. No, sir.

Q. Did you have a bank account in your own name? A. I did.

Q. And you attended to the business of either working for the union or working for yourself during all that time? A. That is right.

Q. You made no effort to conceal yourself?

A. You mean to hide myself in any way?

Q. Yes. A. No, sir.

Q. You were always available, weren't you?

Mr. Turkus: I object.

A. Available to whom?

Q. Well, put it this way: You were always at your place of business, weren't you, or at your home, or in the garment district, or in the Cut-

5656

Paul Berger--For People--Cross

ters Local, during these periods, September, 1936, 1937, September, 1938, 1939, 1940, all those times—isn't that a fact? A. Yes, sir, that is right.

Mr. Barshay: May we have the date, Mr. Turkus, please, when McCarthy took a statement from Mr. Rubin?

Mr. Turkus: December 16, 1937.

5657

Q. So that up to December 16, 1937, you were living in the City of New York with your family, attending to your business in the regular course of events, using your own name and living openly?

Mr. Turkus: Objected to as already answered.

The Court: Let him answer, again.

Q. (continuing) Is that so? A. Yes, sir.

5658

Q. From December 16, 1937, until the day you were arrested in this case, June 5, 1941, you also were in the City of New York, living under your own name, with your family, attending to your regular business, appearing daily at places of business; is that so? A. Yes, sir.

Q. You never left town except for maybe a vacation or so? A. I did.

Q. (The Court) Were you ever in hiding? A. No, sir, I never hid.

Q. The defendant Buchalter never told you to hide from the authorities? A. No, he told me to be careful, though.

Paul Berger—For People—Cross

5659

Mr. Barshay: I move to strike out the latter part.

The Court: Strike out the last part as unresponsive.

Q. Will you please try to answer my questions without volunteering? A. Yes, sir.

Q. As a matter of fact, Berger, after December 16, 1937, that being the day when Rubin was questioned by Assistant District Attorney McCarthy, you had seen and spoken to Rubin very often, didn't you? A. Repeat that question, please.

5660

Q. After December 16, 1937, that is the day on which Mr. Rubin was questioned by Mr. McCarthy, you had seen and spoken to Rubin quite frequently, is that right? A. On that day?

Q. No, after that date. A. Yes, sir.

Q. I mean, if you used to see Rubin in the garment center or the Clothing Truckers Association, you spoke to him? A. Did you say December?

Q. December 16, 1937. A. Yes, sir.

5661

Q. You had seen Rubin, hadn't you? A. I don't think I did.

Q. You did not? A. No, sir.

The Court: You mean on that day?

Mr. Barshay: No, after that day.

The Witness: Oh, yes.

Q. If you are not clear now, tell me. Do we understand each other? A. After that day?

Q. Yes, you saw him in 1937 and 1938, 1939 and 1940? A. No, sir.

Q. You did not? A. I did not.

5662

Paul Berger—For People—Cross

Q. When is the last time you saw him? A. The last time I seen him, to be sure, to the best of my recollection, that is when I went before the Grand Jury, that is the last time. I did not see him in 1939.

Q. Did you see him in 1938? A. I did.

Q. There is no doubt about that? A. No, sir.

Q. Did you talk to him? A. That is right.

Q. Did you have business with him? A. I will not say business, but I spoke to him.

5663

Q. You had some financial dealings with him with respect to the New York Truckmens Association, didn't you? A. I did not.

Q. In 1938? A. Absolutely not.

Q. We will come back to that later. At no time until June 5, 1941, had anyone from the District Attorney's office in Brooklyn been to your home or to your place of business and left a subpoena for you, is that right? A. That is right.

5664

Q. You learned in the newspapers or by talk in the garment center that Rubin, in 1937, had spoken before the Grand Jury in Manhattan, hadn't you?

Mr. Turkus: I object, that is not the testimony.

Mr. Barshay: That was Rubin's testimony, Mr. Turkus.

Mr. Turkus: This man has testified how he learned about the Rubin talk.

The Court: Objection overruled.

A. That is right.

Q. You knew he testified in the flour case against the defendant Buchalter?

Paul Berger—For People—Cross

5665

Mr. Turkus: I object, unless the time is fixed.

Q. In 1940, February, 1940. A. That is right.

Q. Do you know when the defendant Buchalter surrendered to Edgar Hoover, of the F.B.I., in August of 1939? A. I read about it.

Q. You heard about it? A. I read about it in the newspaper.

Q. You were still in town, living under your own name? A. Yes, sir, but I was in custody at the time.

5666

Q. Will you please not volunteer? You said you would not.

Mr. Turkus: I object, that is not volunteering.

Q. Did you read in the paper or did you hear any place all that the defendant Buchalter was indicted in May of 1940? A. I did.

Q. In this case? A. That is right.

Q. You knew about that? A. I read about it.

5667

Q. You were still living in town under your own name, with your family, attending to your business? A. That is right.

Q. Did there come a time when you heard or read that Rubin had made a statement to Inspector McDermott and to District Attorney O'Dwyer, in the early part of 1940, before the indictment of the defendant Buchalter? A. I don't remember reading that.

Q. Did you ever hear it? A. I did not.

Q. Did anybody tell you that—yes or no? A. No.

5668

Paul Berger—For People—Cross

Q. Did Rubin tell you that? A. Absolutely not.

Q. At any rate, you were not sent for, to your knowledge? A. Will you repeat that?

Q. At any rate, you were not sent for by Judge O'Dwyer's office—I don't mean by the Judge himself—but by his Assistants or by the Police Department working with the D. A.'s office, before the indictment of this defendant, in May, 1940, were you? A. No, sir.

5669

Q. You were not sent for or questioned by the District Attorney's office, meaning Judge O'Dwyer's office, or the Police Department, with respect to this case, until June 5, 1941; is that right? A. Yes, sir.

Q. Can you give me the date when you testified before this Grand Jury? A. I would say about five or six weeks ago.

Q. Did you sign a waiver of immunity? A. I did not.

Q. So that you have not been indicted in the Rosen murder? A. Not as far as I know.

5670

Q. Did you receive advice from counsel about not signing a waiver, when you went in before the Grand Jury in this case? A. I did.

Q. And pursuant to his instructions you did not sign; is that correct? A. That is right.

Q. The lawyer that stood up in court the other day, Mr. Gardner, was the same lawyer that gave you that advice, wasn't he? A. Yes, sir, that is right.

Q. Will you please speak up? A. That is right.

Q. Now, between September 11, 1936, and the day you were arrested here, you testified in

direct examination that you had been in custody in New York County, that is, you were under arrest awaiting fixation and putting up of bail, twice? A. Yes, sir.

Q. You were arrested under your right name there? A. Yes, sir.

Q. You gave your right address? A. Yes, sir.

Q. When did you see the defendant Buchalter for the last time before you saw him in this court? A. In the beginning of June, 1937.

Q. You have a good memory, Berger? A. 5672
Pretty fair.

Q. You remember that without any doubt? A. That is right.

Q. Can you tell us the place where you saw the defendant Buchalter in June of 1937? A. The last time I met him was on 5th Avenue and 23rd Street.

Q. On 5th Avenue and 23rd Street, what part of June, if you can tell us? A. Around the beginning of June.

Q. Would you say the first week of June? A. The beginning of it.

Q. Is it fair to say between June 1st and June 10th? 5673

Mr. Turkus: I object.

Q. Do you want to make it between June 1st and June 15th, 1937?

Mr. Turkus: I object.

The Court: See if you can fix it accurately; don't guess. Can you remember?

The Witness: I cannot say definitely.

5674

Paul Berger—For People—Cross

Q. But you are definite about the month? A. Yes, sir, about the beginning.

Q. And you are definite about the year? A. Yes, sir.

Q. Where did you see him, in the street or in his place of business? A. In the street.

Q. Do you know exactly where? A. Around 5th Avenue and 23rd Street.

Q. Was it by appointment? A. It was.

5675

Q. Can you tell us where you made the appointment? A. I was meeting him there quite a number of times.

Q. Before that time, I take it, you made an appointment to meet him there that time? A. That is right.

Q. With reference to the last time, now when before the last time did you see Bachalter? A. I would say, to the best of my recollection, a couple of days before that.

Q. About two days before; where did you meet him then? A. The same place.

Q. Always in the street? A. The last month or so I used to meet him in the street.

5676

Q. Did he have the Raleigh Clothes then, at No. 200 Fifth Avenue? A. Yes, sir.

Q. In other words, instead of meeting you upstairs at the Raleigh Clothes, he met you downstairs? A. Not in front of the building, sometimes in the park.

Q. Would you see him coming down from the Raleigh Clothes? A. No, sir.

Q. Did you call him at the Raleigh Clothes about that time? A. No.

Q. You knew he was there, though, at 200

Fifth Avenue, about that time? A. I presumed he was.

Q. Well, that is what brought him in the vicinity of 23rd Street and 5th Avenue?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Before the time you just described you saw Buchalter at 23rd Street and 5th Avenue, when had you seen him before that? A. I would like the question repeated.

5678

(Last question read to the witness.)

A. Before I started meeting him in the street I used to meet him up in his office.

Q. When was the last time you saw Buchalter in his office? A. To the best of my recollection, it would be about between a month or five weeks before he left.

Q. You said you saw him last in the early part of June, 1937, didn't you? A. That is right.

5679

Q. And for the last time you saw him in the Raleigh Clothes at 200 Fifth Avenue, it was within a month of the last time you saw him in the early part of June, 1937? A. I did not say that.

Q. Is it fair to say that in the month of May, 1937, you saw the defendant Buchalter at the Raleigh Clothes?

Mr. Turkus: I object to it as having been already answered. Well, I will withdraw the objection.

5680

Paul Berger—For People—Cross

A. I would say that to the best of my recollection it would be the first couple of weeks.

By the Court:

Q. We don't know what your best recollection means. A. It would be maybe about—between two or three weeks of May—after April.

By Mr. Barshay:

5681

Q. What? A. The first few weeks in April.

Q. The first few weeks in April is the last time you saw him at the Raleigh Clothes?

The Court: He said it could be. He did not say it was. He is obviously groping to form a recollection of dates.

Q. Give us your best recollection, please. A. The best of my recollection would be the first week or two in April.

5682

Q. That is the last time you saw him at the Raleigh Clothes? A. Yes, sir.

Q. That refers to 1937? A. Yes, sir.

Q. Thereafter you met him in the street almost daily? A. Daily or every other day.

Q. Openly on the street corner? A. Well, we were pretty careful.

Q. But you spoke to him openly?

Mr. Turkus: I object as already answered. He said they were pretty careful.

Mr. Barshay: I withdraw the question.

Q. I mean, you did not hide in hallways? A. We did.

Q. What hallway did you hide in? A. Well, there was one building on 5th Avenue and 23rd Street.

Q. That is the Raleigh building? A. I beg your pardon.

Q. In that other building? A. No, sir, right opposite.

Q. The Flatiron Building? A. Yes, sir, and also in the subway. We would walk down in the subway, the 23rd Street subway.

5684

Q. Where did you meet him? A. Sometimes I would meet him at 23rd Street and 5th Avenue.

Q. In the street? A. In the street, sometimes in the park, sometimes downstairs in the subway.

Q. How many times did you meet him, after April of 1937, in the street? A. We always met after that in the street.

Q. Always met in the street? A. After that.

Q. You mean in the public street? A. Yes, sir.

5685

Q. Anybody else with you? A. No, sir.

Q. Anybody else with him? A. No, sometimes Siney would be there too.

Q. In the street? A. Yes, sir.

Q. Between the first two weeks of April, 1937, and the last time you saw him in June of 1937, can you tell me how many times you saw the defendant Buchalter in the City of New York at any time or in any place?

Mr. Turkus: Objected to as already answered.

5686

Paul Berger—For People—Cross

By the Court:

Q. Do you remember? A. I did not keep any tabs, but quite often I did.

By Mr. Barshay:

Q. But you have a recollection of seeing him? A. Yes, sir.

5687

Q. You knew, didn't you, at that time, that the Police Department of the City of New York were surveilling him every single day, did you?

Mr. Turkus: I object to the form of the question.

Q. (The Court) Did you know it? A. I did.

5688

Q. As a matter of fact, Berger, the fact that the cops were following him from New York, and the District Attorney's office, was made known to you by the defendant Buchalter himself? A. He told me that he sneaks away from them; and that is the only way he can meet me, that he loses the cops.

Q. Tell us everything he told you about the cops trailing him.

Mr. Turkus: I object; he said he sneaks away from the cops.

Q. And sneaking away from the cops—the cop must first be there to sneak away from, isn't that so?

Mr. Turkus: I object; that is obvious.

A. The only thing I know is he told me he loses the cop. He comes to where I am because he usually lost them in the subway. He loses them some way—how he did it I don't know.

Q. He did tell you the cops were on his tail?

A. He told me he was being watched.

Q. Twenty-four hours a day? A. He did not tell me how long, but he told me he was being watched.

Q. He was being tailed? A. He told me he was being watched.

Q. You saw some policemen around, sometime, didn't you? A. I don't remember.

Q. Never? A. I don't know whether they were police or not. They did not have any uniforms. I saw people in plain clothes; I don't know whether they were cops or not.

Q. (The Court) That is a busy locality and there are lots of people? A. Yes, sir.

Q. You knew some of the detectives who were assigned to watch the defendant Buchalter? A. No, sir.

Q. Not by name, I mean by face. A. No, sir.

Q. Do you know when the cops started to watch him? A. No, sir.

Q. Did he tell you? A. No, sir.

Q. Did you know then that the cops stopped watching him? A. No, sir.

Q. Did he tell you? A. No, sir.

Q. Did you know he was on trial in the Federal Court in October and November, a part of each month, in November, 1936? A. Yes, sir.

Q. You used to see him then, in 1936, when he was on trial in the Federal Court? A. See him where?

5692

Paul Berger—For People—Cross

Q. Where did you see him, if you did at all?

A. The last time I seen him—when he was on trial, yes, I saw him in the bull pen.

Q. Is that the only time you saw him during that trial? A. I seen him after the case was over.

Q. But during the trial he was out on bail, wasn't he, Berger, if you know? If you do not know, tell me. A. I don't remember.

5693

Q. Now, answer this yes or no, please: On November 1, 1938, did you see Rubin? A. I am not definite whether I seen him just on that day.

Q. Well, about that day did you see Rubin? A. I seen him around the district, around the clothing market.

The Court: Counsel is specific as to dates.

The Witness: I definitely cannot say.

By the Court:

5694

Q. He wants to know if around that date—if you can recall. A. I cannot definitely recall, if it was around that date or not. I know I answered him.

By Mr. Barshay:

Q. Did you on that day attempt to induce Max Rubin to commit perjury in New York County, and did you attempt to induce him to say that Thomas Dewey and his assistants were forcing Rubin to swear falsely in a case pending in New York County against you? A. I refuse to answer that question, on the ground it may in

criminate me, on the advice of my counsel. But I wish I could answer it so I could tell you who told me to do it.

Q. Do you want to waive privilege of your rights?

Mr. Turkus: I object. The witness has stated his position.

Mr. Barshay: I move to strike out the latter part of his answer.

The Court: Strike it out.

5696

Mr. Barshay: Will your Honor instruct the jury to please disregard it?

The Court: Yes.

The Witness: You know who told me.

Q. Now, please. Now do you recall the date?

Mr. Turkus: I object. It makes no difference, the exact date.

The Court: What date?

Mr. Barshay: The date of this alleged inducement.

The Court: He said he refuses to answer your question upon constitutional grounds.

5697

Mr. Barshay: I want to know if he remembers the date, November 1, 1938.

The Court: But your question embraced something which would violate his Constitutional rights, and the objection was sustained.

Q. Answer this question yes or no: Did you threaten Rubin with violence unless he swore as you wanted him to do?

5698

Paul Berger—For People—Cross

Mr. Turkus: I object. That would be violative of his rights; although I am prosecutor I have to protect him from injury, as much as I dislike to.

The Court: You cannot.

The Witness: I refuse to answer the question; it might incriminate me. I only hope I could.

Mr. Barshay: I move to strike out the answer.

5699

The Court: Strike out the latter part. It does not mean anything. The point is, as all counsel know, the man is under indictment in New York County, and he was advised at the outset by the Court, before he was permitted to answer any questions by the District Attorney, as to his Constitutional rights. The Court is obligated to do that. Now he is availing himself of that right in respect to this question. We cannot conjecture as to whether or not it could be used against him on the trial of that indictment. We are bound to accept, under the law, his assertion of his Constitutional right.

5700

Mr. Barshay: I take it your Honor does not intend to preclude me from asking the question?

The Court: No.

Q. This advice, too, was given to you by Mr. Gardener, who was in court here on the morning you took the stand; he was the same lawyer?

A. Yes.

Q. You are awaiting trial in New York County on that charge, are you? A. I am.

The Court: Is the copy of the New York indictment here? -

Mr. Barshay: There are more than one. I have a copy of one and part of another.

The Court: I would ask to see them all.

Mr. Barshay: This is a copy that was made for me, with respect to the subject we are now talking about.

The Court: Tell me how many indictments are against him. Have you just checked that up?

Mr. Barshay: I cannot say I did, but my information is, from the copy of the record handed to me, Judge— This is the one we are speaking about, and another one.

The Court: I do not know if you get what I mean. If I had copies of all indictments I could read them and I could form, at least in my own mind, a notion as to whether the Constitutional right is asserted in good faith.

Mr. Barshay: Then I will have copies for you before this man leaves the stand.

The Court: I don't say I have a right to reveal that or alter my ruling, but at least I can form an impression.

Mr. Barshay: I will make the effort, Judge.

By Mr. Barshay:

Q. Did you tell us, of your own personal knowledge, how many trials you are already in in New York County? A. Two.

5704

Paul Berger—For People—Cross

Q. The one that I just spoke of, is that one of them? A. That is right.

Q. The other one is extortion, isn't it? A. A superseding indictment; the extortion was a superseding indictment. I presume that is the only one.

Q. You are out on bail on two charges now, Berger?

5705

Mr. Turkus: He is not on bail. I object.

Q. In New York County, I should say. A. That is right.

Q. You knew personally, didn't you, that after September 3rd—rather, after October, 1937, Rubin was under police guard? A. That is right.

Q. You saw him with policemen? A. That is right.

Q. You saw him with detectives? A. I did.

Q. When I say detectives, I don't mean uniformed men. A. That is right.

5706

Q. You spoke to him while the officers were there; is that so? A. That is right.

Q. Did the officers step aside when you and Rubin spoke? A. At times he did.

Q. You had a private conversation with him, did you? A. That is right.

Q. Without the hearing of the officer? A. We did.

Q. Berger, when did you join the union? A. 1919.

Q. Were you a cutter before you joined the union? A. I was an apprentice.

Q. In the clothing industry? A. That is right.

Q. Was it essential, then, before you could gain membership in the union, to be either a cutter or an apprentice? A. That is right.

Q. If you were not connected in some way with the clothing industry, either as an apprentice or a helper of some kind in the clothing industry, you could gain no membership in Local 4, is that right? A. I would not say that.

Q. There were exceptions? A. At that time, if anybody connected with the union, as far as the underworld is concerned, they would fix it up, and you would be able to do so.

5708

Q. So if someone had a connection with the underworld, he could get into the union? A. Yes.

Q. That is how Rubin got in, isn't that so? A. I cannot say that; I don't know. How do I know how Rubin got in the union?

Q. Well, if you don't know, tell me: I am trying to find out whether you do or not. Did you know Jack Noya when you joined the union? A. Yes, sir.

Q. What position did he have in the union? A. I don't know whether he had any position there.

5709

Q. Did you know then, in 1919, whether or not Jack Noya was one of the underworld men connected with the union? A. No. I would not say I knew at that time.

Q. Did you know that in 1920? A. I cannot definitely remember that.

Q. In 1921? A. Around that time.

Q. So that in 1921, to your knowledge, Jack Noya was a strong arm guerilla, or underworld character, connected with the union? A. That is right.

5710

Paul Berger—For People—Cross

Q. When did you meet Rubin for the first time? A. I would say around—to the best of my recollection, about 1926.

Q. Was that the very first time? A. That is right.

Q. You never saw Rubin around the union between 1917—exclusive of the years 1921 and 1923? A. To the best of my recollection.

Q. Who introduced you to Rubin? A. Danny Fields.

5711

Q. He was a partner of yours, or a good friend of yours? A. That is right.

Q. Which was it? A. A good friend of mine.

Q. An underworld character, was he, at that time—yes or no? A. Not at that time.

Q. Did you know "Legs" Diamond? A. No, sir.

Q. Did you know Johnny Spanish? A. No, sir.

Q. Did you know Kid Dropper? A. No, sir.

Q. Did you know Slabow, Abie Slabow? A. I did.

5712

Q. Where did you meet him? A. I met him on Broadway and 12th Street.

Q. In what year? A. I would say around 1924 or 1925.

Q. May I direct your attention to your direct testimony. Did you say it was—if I am mistaken, let me know—about 1923, could that be possible? A. Around that time. I cannot definitely say to the month, so many years back.

Q. Did you know Terry Burns? A. I did not, but I heard of him.

Q. Up to 1926, can you give me the names of the underworld characters, gunmen, guerillas or sluggers that were working for the union of

which you were a member? A. Kid Dropper. I heard of him. I did not know him.

Q. Tell me the names.

Mr. Turkus: Is this hearsay? I have no objection, but I want the record to show that it is hearsay; what he knows is by hearsay.

Q. Will you answer? A. Kid Dropper, Johnny Spanish, Jack Noya.

5714

By the Court:

Q. Do you know that, or is it hearsay? A. Johnny Spanish I don't know. I did know of Jack Noya.

Q. Don't say anything unless you know it of your own knowledge, because it is of no value whatever; it is hearsay.

By Mr. Barshay:

Q. Tell us whom you knew personally. A. Jack Noya.

5715

Mr. Turkus: That is not responsive to the other question. The question was, who were the guerillas that were on the union payroll doing certain jobs of slugging and other work for the union?

By Mr. Barshay:

Q. That you knew personally.

The Court: I did not understand it that

5716

Paul Berger—For People—Cross

way. The Court has to do a little thinking while all this is going on. The first thing that occurs to the Court is, what is the reason for the question? I assume it is to attack credibility.

Mr. Barshay: That is correct.

The Court: Of course you understand, it being collateral, you are bound by the answer, and you cannot put a single witness on the stand to say it is not so?

5717

Mr. Barshay: That is elementary. But what I want to show is association before a certain specific time.

The Court: The question asks for more than that; it asks for hearsay, and the District Attorney is grabbing that to get before the jury the names of certain people, underworld characters of which the witness has no personal knowledge.

Mr. Barshay: I am trying to find that out. These names were brought out by Mr. Turkus.

5718

The Court: I was just cautioning you.

Mr. Turkus: He just asked if he knew Dropper or Spanish personally, and as to what guerilla work was done.

By Mr. Barshay:

Q. Let us straighten it out, Berger: Who did you know personally who was doing strong-arm work for the union before 1926? A. I would say Jack Noya.

Q. Now, anyone else that you knew personally, who was doing that kind of work? A. Danny Fields, but he was a member of the Union.

Q. Any one else? A. Slabow, I heard.

Q. Any one else? Don't shake your head. A. That is all I knew.

Q. Did you take instructions from Slabow personally with respect to the conduct in strikes, the settlement of strikes, picketing, etc.? A. No, I did not.

Q. Did you take instructions from Noya, with respect to the same thing? A. I did not.

Q. Did you take instructions from Danny Fields, with respect to those things? A. Not before 1926.

5720

Q. When did you become a slugger for the union? A. I would say around, to the best of my recollection, around 1926, when Phil Orlofsky became manager.

Q. Do you say that before 1926 you participated in no sluggings whatever? A. No.

Q. You say no? Would you say that? A. To the best of my recollection, no, sir.

Q. You did not? A. No, sir.

Q. You were working as a cutter? A. A cutter and an active union member at that time.

5721

Q. What were your duties as an active union member at that time? A. Attend meetings.

Q. Anything else? A. Picket where there was a strike.

Q. Anything else? A. No, sir.

Q. Did you participate in the International strike? A. I did.

Q. Were you a slugger then? A. I was, and there were a hundred others; I was only one.

Q. You said you would not volunteer. Now please answer the question and give us the year of the International strike. A. I do not definitely remember that.

5722

Paul Berger—For People—Cross

Q. May I remind you? A. Sure.

Q. Was it 1925? A. I don't definitely remember.

Q. It does not refresh your recollection? A. I am still saying not definitely.

Q. Do you remember August 4, 1925? A. So many years back I can't remember.

Q. You tell me if you don't remember. A. I cannot remember.

Q. How long did that strike last? A. Quite a number of months.

5723

Q. How long were you active in that strike? A. I was active during that strike.

Q. Were you a cutter at the same time? A. I think I was.

Q. What? A. I was.

Q. Did you work as a cutter during the International Tailoring strike? A. I think I did; I did, sure.

Q. From morning until night? A. Some days I would be off.

Q. Did you get paid for the days you were off?

5724

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant. What difference does it make?

Mr. Barshay: It makes a lot of difference. May I say the purpose, if you want to know?

The Court: Yes.

Mr. Barshay: This man has said he has been a cutter until 1926. I am now directing his attention to a strike in 1925 and impeaching him for the purpose of

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5725

showing that he was a guerilla and slugger in 1925. That is my purpose.

The Witness: And I was a cutter at the time.

The Court: You are going back quite a number of years, and he has answered it is hard to recall. Do you think this would amount to anything as impeachment? Splitting hairs on things so far back?

Mr. Barsbay: I except. I think it means a lot. It will amount to a lot when I connect it up.

5726

The Court: Thank you for raising your voice. He may answer.

Mr. Barsbay: Am I not allowed to raise my voice in this court?

The Court: You are expected to be courteous and follow the Court's rulings.

Mr. Barsbay: I cannot understand your Honor.

The Court: You are a man that likes to beat up a referee.

Mr. Barsbay: My name is not Durocher.

5727

The Court: The Court is trying to be fair to both sides.

Mr. Barsbay: I didn't say anything else.

The Court: Just have in mind your voice.

Mr. Barsbay: I am proud of it.

The Court: I will see that you have something to be proud of from now on. Proceed.

5728

Paul Berger—For People—Cross

By Mr. Barshay:

Q. Did you get paid for the days you were off?

Q. (The Court) Do you remember? A. No, I do not, but I know I was a cutter at the time.

Q. You attended to activities in the International Tailoring strike from time to time, didn't you? A. Sometimes.

5729

Q. Did you get any extra pay from the union for that work? A. I did.

Q. So that that pay was in addition to the pay you had been receiving from your private employer? A. That is right.

Q. Can you tell us how long you received extra pay from the union? A. The duration of the strike.

Q. How many months? A. I definitely would not say.

Q. Can you tell us the amount? A. \$25 a week while I was working.

5730

Q. Who was directing the International strike on behalf of the union? A. Philip Orlofsky.

Q. Who was giving you the orders with respect to your personal conduct in the International Tailoring strike? A. Philip Orlofsky.

Q. Who was the underworld character in charge of that strike? A. Jack Noya.

Q. Was he the man who was giving your instructions? A. No, sir, he did not.

Q. Was he present every day on the picket line? A. Well, I have never seen him there.

Q. How many sluggings did you take part in in the strike? A. A couple of them.

Q. How many? A. Maybe two or three.

Q. Did you use any blunt instrument in the sluggings? A. I did not.

Q. Did you use any weapon in the sluggings? A. I did not.

Q. Was Danny Fields working with you at that time in the strike? A. He was, and there were a hundred others.

Q. A hundred others? A. Around that.

Q. All participating in the slugging? A. That is right.

Q. You being one of the one hundred? A. That is right.

5732

Q. Do you remember August 4, 1925, during that strike? A. I am not definite what year the strike was on. I just cannot remember.

Q. May I refresh your recollection? Had you been in custody August 4, 1925? A. I don't remember.

Mr. Turkus: Objected to as immaterial.

The Court: Objection overruled.

Q. You don't remember that day? A. Absolutely not.

5733

Q. Do you remember whether you were in court on that day during that strike? A. I was arrested in that strike.

Q. Was it August 4, 1925? A. I cannot remember.

Q. Was it for felonious assault that you were charged with? A. It was.

Q. Do you remember August 6, 1925, during that strike? A. I do not.

Q. Two days after the day you said you were

5734

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arrested during that strike? A. I don't even remember that I was arrested—I know I was arrested and charged with felonious assault, but when, what year, I don't remember.

Q. Can't you tell us, Berger, how many times during that strike you had been arrested? A. I definitely cannot say; I don't remember.

Q. Was it once?

5735

Mr. Turkus: I object. Arrests are not proper.

Mr. Barshay: He volunteered it.

The Court: Objection overruled.

A. I don't remember. I know I was arrested maybe once, twice, maybe three—I don't remember.

Q. Did you kill a man during that strike? A. No, sir.

Q. Did you beat him up so badly he died two days later? A. No, sir.

Q. Were you in the Homicide Court during that strike?

5736

Mr. Turkus: I object; that is going beyond the realm of cross-examination.

The Court: Objection sustained.

Q. Did you know Izzy Korman, who was a picket in the strike? A. I do not.

Q. Who was a brother-in-law of Barlow, did you know him? A. No, sir, there are a few thousand members there; do you expect me to know everybody.

Q. Do you know that Korman was killed during that strike?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Did you participate in the slugging and killing of this Izzy Korman, during that strike, on August 6, 1925?

Mr. Turkus: Objected to as already answered.

The Court: Objection overruled.

5738

A. Absolutely not.

Q. Did you see Rubin there during that strike?

A. I did not.

Q. Wasn't he there on the picket line? A. I have not seen him.

Q. Did you know him then? A. Yes, I did.

Q. Was he an active participant in that strike?

Mr. Turkus: I object, that is neither affecting his credibility nor going to the Rosen killing.

Mr. Barshay: I object to the form of the objection saying anything about the Rosen killing.

5739

The Court: Objection sustained.

Mr. Barshay: Will your Honor permit me to repeat that question? I made an objection, and I thought your Honor sustained my objection to that statement.

Mr. Turkus: Your objection was after mine.

The Court: I ruled on Mr. Turkus's objection.

5740

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Mr. Barshay: Will you rule on mine, Judge?

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Did you know a person named Carl Johnson(?)? A. No.

Q. Were you on a trolley car, a Church Avenue trolley car, October 21, 1925? Do you recall that? A. Repeat that, please.

5741

Q. Were you on a Church Avenue trolley car October 21, 1925, at 20 minutes after 6 o'clock in the morning? A. I was, with a half a dozen others.

Q. Was Carl D. Johnson, a cutter, there? A. I don't know.

Q. Were you on that trolley car for the purpose of following someone who was made known to you to be a strike breaker? A. I was there with six others.

5742

Q. On that trolley car, while you were there with six others, at Church Avenue and Nostrand, did you cut Johnson's face on the right cheek, the right side of his head, four times with a knife? A. I did not.

Q. Did you participate in it? A. I was there.

Q. For the purpose—for that specific purpose, isn't that so? A. No, sir.

Q. What were you on the trolley car for? A. We were going to beat him up, me and six others.

Q. And that is what you did, you and the six others? A. No.

Q. Didn't you and six others plan this beating up of Johnson after you got on the trolley car?

A. We were told to do it.

Q. Who told you to do it? A. Philip Orlofsky.

Q. And you carried out your instructions? A. With a half a dozen others.

Q. Was Johnson cut? A. I don't know; I was told after that he was.

Q. You were on the trolley car? A. I was.

Q. You knew what you were going on the trolley car for? A. That is right.

Q. You had followed him from his home? A. That is right.

Q. To make sure he does not get to his place of employment? A. That is right.

Q. Was he cut on the trolley car? A. I don't know.

Q. Did you flee from the trolley car? A. I did.

Q. Were you caught? A. I was.

Q. Did you learn then that he was cut? A. I did.

Q. Four times on the side of his cheek? A. I don't know where, but I was told he was cut.

Q. Did you see him subsequently? A. I did not.

Q. Did you see him subsequently in court? A. What do you mean by "subsequently"?

Q. Did you see him later in court? A. Yes, sir.

Q. Did you see his face? A. I did.

Q. Was it cut? A. I don't remember seeing it cut.

Q. How many other people did you personally or with others participate in slugging in the International strike? A. I told you before.

Mr. Turkus: I object to that.

The Court: Objection overruled.

Q. (The Court) How many did you participate in slugging during that strike, if you remember? A. Maybe two or three.

By Mr. Barshay:

Q. Were there any other strikes before then which you participated in? A. I cannot recollect.

Q. Can you recollect how many sluggings you took part in before this one we spoke about? A. No, sir.

5747

Q. Were there some? A. I don't remember.

Q. Did you participate in the Finkelstein strike, in 1921? A. No, sir.

Q. You were never there? A. No, sir.

Q. Not once? A. No, sir.

Q. Did you have anything to do with the Finkelstein strike? A. To the best of my recollection, I know there was a Finkelstein strike at one time, and they beat the union somehow. The next time I participated in the strike, and that time he was chased out of town.

5748

Q. What year was that? A. I don't remember definitely.

Q. Was it after the International strike? A. Yes, sir, to the best of my recollection.

Q. About how many years? A. I cannot answer that because I do not remember.

Q. Did you slug anybody in that strike—yes or not? A. Maybe I did; I don't remember.

Q. Do you know how many times you slugged people in that strike? A. Listen, Counsellor, I told you there were over a hundred people working for the union at the time, and the members.

Q. And you were one? A. No, sir, I beg your pardon; I was a member of that union. There

were a hundred others that were members and there were outsiders.

Q. I want to know about you. A. I am answering you.

Q. How many sluggings can you recall participating in in the last Finkelstein strike before you chased him out of town? A. I chased him out!

Q. Before the union chased him out of town. A. Maybe one, maybe two; I don't remember.

5750

By the Court:

Q. Were all sluggings under orders by union officials? A. That is right.

Q. Were the sluggings left to the discretion of the slugger? A. That is right.

Q. Did you have any discretion about it or just take orders? A. Just took orders.

Q. That was part of the system? A. That is right. There were a hundred there.

Q. No free-lancing in slugging? A. Now and then.

5751

Q. Sometimes you would do it on your own? A. If I were attacked by some other Guerillas who would be there, naturally I would fight back.

By Mr. Barshay:

Q. The union did not tell you which people to slug at which time, did they? A. What is that?

Q. The union did not tell you which persons to slug at a particular time, did they? A. Then how would you know who to slug?

Q. I will tell you if you want to know—maybe

5752

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on—who was on the picket line whom you thought deserved a slugging, you slugged. A. No, sir, you are all wrong.

Q. Do you know which ones? A. It could have been the union had some people working on the inside; they usually have that.

5753

A. Spies? A. That is right. Then they would go out and tell union officials who he is and that is the way they worked it. Sometimes the other side would have the underworld—well, gangsters connected there, or they were likely to attack us and we would attack them.

Q. In other words, manufacturers had underworld characters, then? A. Sure, Finkelstein did, I knew.

Q. The union had, too? A. Yes, sir.

Q. Both of them worked hand to hand, and you were one of those who worked hand to hand?

A. No, sir, I was a member; I was not an underworld character; I was a cutter.

5754

Q. You were a "cutter" in all the sense of the word? A. Yes, sir, I cut myself many times while working on the machine.

Q. And you cut others? A. No, sir, the only one I cut was myself. I was a damn good cutter, for your information. Ask some of the firms I worked for; I was a good cutter.

Q. Did you know Anthony Brullo of 312 East 112th Street? A. No, sir.

Q. Did you know him March 9, 1927? A. No, sir.

Q. Did you know Anthony Brullo who had a place of business, or worked in a place of business at 361 West 36th Street in the Borough of

Manhattan in March of 1927? A. I don't remember nobody by that name.

Q. Was there a strike in those premises then?

A. What kind of a place was it?

Q. I am trying to probe your memory. A. I do not.

Q. I will try to refresh your recollection; did you know or did you use the name Sam Gold then? A. Yes, sir.

Q. Did you live at 106 Ludlow Street at any time? A. No, sir.

Q. Did you tell the police that you did? A. I did.

Q. Did you tell them your name was Sam Gold? A. I did.

Q. Did you know a person named Morris Zolombeck? A. No.

Q. Or Harry Liss, or Sam Shifter? A. Yes.

Q. Isaac Robbins? A. No, sir.

Q. Henry Myers? A. No, sir.

Q. Did you know a group of men, one of whom was the person you just mentioned you knew, Harry Liss, or Sam Shifter, and did you go in the place of Anthony Brullo, at 361 West 36th Street, on March 9, 1927, and there attack him and give him eight stitches? A. I don't remember that.

Mr. Turkus: I object.

The Court: Objection overruled.

Q. Do you remember when you gave the name Sam Gold, address 106 Ludlow Street to the police? A. I remember that name, yes, sir.

Q. Do you remember the name and the time

5758

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you gave it to the police, and the address you gave to the police with respect to this occurrence on March 9, 1927, at 361 West 36th Street? A. I do not.

Q. Did you tell the police then you were a shipping clerk?

Mr. Turkus: I object to the form of the question because the form makes it ambiguous and confusing.

5759

The Court: It is terribly remote.

Mr. Barshay: Terribly remote, did you say?

The Court: Yes, are you going to quarrel about it?

Mr. Barshay: Exception.

The Court: The objection is sustained, too far away.

Q. Do you remember Brullo walking in front of the premises where there was this strike at 361 West 36th Street? A. I do not.

5760

Q. Did you tell the police then you were a shipping clerk for three years?

Mr. Turkus: I object.

The Court: The Court has ruled that out.

Mr. Barshay: I am trying to refresh his memory with respect to that.

The Court: No.

Q. Were you in court with the men whose names I mentioned to you, on that day?

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5761

Mr. Turkus: Objected to. That does not affect credibility.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Did you all pull up in an automobile in front of these premises, jump out of the car, and attack Brullo?

Mr. Turkus: I object.

The Court: I will allow it. This goes into more detail.

5762

A. No, sir.

By the Court:

Q. You said that for years you did slugging and picketing? A. Yes, sir.

Q. And for many years you slugged a good many people, I take it? A. I did.

Q. In many strikes? A. Not many, but a few of them I did.

Q. Is this a fair statement: that most of these were on union official orders, specifically as to the names of people to be assaulted?

5763

Mr. Barshay: I object to the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. That is right.

By Mr. Barshay:

Q. On August 3, 1928, did you use the name of Harry Weinstein? A. I don't remember.

5764

Paul Berger—For People—Cross

Q. Did you ever use the name of Harry Weinstein? A. I cannot definitely recollect.

Q. Do you deny using the name of Harry Weinstein?

Mr. Turkus: I object to the form of the question. He says he does not remember.

Q. Did you ever live at No. 90 Norfolk Street? A. No, sir.

5765

Q. Did you ever tell the police you did? A. I don't remember.

Q. Did you ever tell the police your name was Harry Weinstein, and that you lived at No. 90 Norfolk Street, on August 3, 1928? A. I do not definitely remember that.

Q. Did you know Harry Freedman and Sol Bloom, in August of 1928? A. No, sir.

Q. Did you and Harry Freedman and Sol Bloom attack a man named Ben Green, in a strike conducted on August 3, 1928, in the Borough of Manhattan?

5766

Mr. Turkus: I object to that.

The Court: Objection overruled.

A. No, sir.

Q. Were you in court that day, if you recall? A. I do not remember. If it was so, I will tell you. I am not looking to hide anything. I don't remember being in court then. Ask me if I was there and I will tell you.

Q. If that is the way you will take it, all right. You know what I am reading from? A. I don't know; you are sidetracking; you are going up-

town; you are trying to hit me in the back to tell you what you want.

Q. I am going in the order of your arrests.
A. Tell me what it is; just call them off when I was arrested and I will tell you if I was guilty or not. You don't have to make a big long story, go to Canarsie and the Bronx. Go to the book and tell me what it is.

Q. You did it when anyone told you? A. Under orders.

Q. On March 9, 1927, then, you were arrested as Sam Gold, for felonious assault? A. Is it so on the record?

Q. Yes. A. Call up the record, and I will tell you. You don't have to make a big thing of it.

Mr. Turkus: No matter what Lepke's counsel or the witness may say as to procedure; we still have rules of procedure that the Court must follow. I object to it.

The Court: Objection overruled.

Q. The court records show that you and Harry Freedman and Sol Bloom, when you used the name of Harry Weinstein and gave the address 39 Norfolk Street, and assaulted Benny Green in a strike, cutting him with a knife—

Mr. Turkus: I object. That is reprehensible. The court records show he assaulted somebody.

The Court: Sustained.

Mr. Barshay: The man invited me to do so and I was accommodating him.

5770

Paul Berger—For People—Cross

Q. Did you use the name of Paul Goldstein August 31, 1928? A. If it is there I used it.

Q. July 3, 1928, while you used the name of Paul Goldstein, did you go to the premises occupied by Rousemond Company at 67 Fifth Avenue? A. No, sir. You said a minute ago if it is there you must have it— I said whatever name I used, if it is there, that is the name.

The Court: If you don't remember a thing, say so.

5771

Q. Did you speak to Mr. Rousemond in those premises? A. I knew him.

Q. Did you talk to him? A. I don't remember.

Q. Were you up there? A. I don't remember being up there.

Q. Did you ever talk to him about taking a certain employee back? A. Repeat that.

Q. Did you ever talk to Mr. Rousemond about taking certain employees back to work? A. No, sir.

Q. Were you ever there with three other men? A. No, sir.

5772

Q. In your presence, Berger, at any time in Rousemond's place, either on the 3rd of July, 1928, or a day or two before or after, with a young man that worked for him at one time— A. (interrupting) I was up there several times. I happened to work with this fellow, a cutter; he was connected with J. Eisner at one time. I worked and knew him as a cutter, if that is the fellow you mean.

Q. Yes, was it the time you were there that

bolts of cloth were destroyed by acid? A. I remember I was arrested for it.

Q. Were there three other men with you at that time? A. I was arrested.

Q. Were there three other men with you when you were arrested? A. No, sir.

Q. Did you live at 668 Saratoga Avenue then? A. I was there, but I do not remember if it was at that time.

Q. Did you use the name of Joe Cohen at that time? A. If it is there I used it; if it is on the record I used it, on the arrest.

5774

By the Court:

Q. Do you remember? That is the question. A. I don't definitely remember.

Q. Did you ever charge your mind with the various names you had given on various times you were arrested? A. I was innocent; I used to get picked up; I didn't want my name in the paper.

Q. Was it customary to give false names on arrests, slugging arrests? A. Well, it was, more or less.

5775

Q. And did you charge your mind with those names so you can remember any of them at this time? A. I can hardly remember them.

By Mr. Barshay:

Q. Do you remember July 28, 1929, pointing a revolver at a man named Meyer Rubin, of 241 West 37th Street? A. No, sir.

Q. Do you remember July 31, 1929, at the place of Meyer Rubin, 241 West 37th Street, throwing

5776

Paul Berger—For People—Cross

a quantity of acid and spoiling \$1,500 worth of merchandise?

Mr. Turkus: I object to the "and". That carries an implication.

The Court: He may answer.

By the Court:

Q. Did you ever throw acid on merchandise?
A. No, sir.

5777

Q. Was that part of your work, or was that a specialist's job? A. There is quite a number of them that probably did, but I did not use it.

By Mr. Barshay:

Q. Were you a member of this brigade that did it? A. Yes, sir.

Q. Do you remember August 17, 1932, using the name of Joseph Schwartz? A. If it is on the record.

5778

Q. I am reading from the record. Did you assault anyone on that day? A. No, sir.

Q. Do you remember March 3, 1933, assaulting someone in the Borough of Manhattan in another strike in the garment center? A. I do not.

Q. You have been living with your wife, you say? A. Yes, sir.

Q. Did you live with any other woman at the same time? A. Must I answer that question?

Mr. Turkus: Objected to.

The Court: Sustained. That is too far afield.

Mr. Barshay: Exception. I submit.

Paul Berger—For People—Cross

5779

your Honor, that goes to a person's credibility.

The Court: Yes! (Question mark after "yes.")

Q. Did you hit a woman on the head with a bottle in a cabaret on Allen Street? A. No, sir.

Q. Do you know who I mean? A. No, sir.

Q. Did you and Danny Fields put yourselves on the payroll of the Stock Clerks Union at \$75 a week—yes or no? A. No, sir.

5780

Q. Were you ever on their payroll? A. No, sir.

Q. Were you ever to the Uneda Froek Company, on West 23rd Street?

Mr. Turkus: I object unless the time is fixed.

The Court: Objection overruled.

A. If you tell me the name of the boss, I can remember.

Q. Don't you know the name of the boss? A. Well, I don't remember whether I was there or not.

5781

Q. Did you ever work for Little Frenchy, a strong-arm man? A. I did.

Q. Did you and Little Frenchy go to the premises 7th Avenue and 35th Street during a strike? A. I don't definitely remember.

Q. Did you ever go out beating up people during strikes with Little Frenchy? A. I was arrested with him.

Q. In 1937, I believe, were you questioned by an Assistant District Attorney in Mr. Dewey's office? A. That is right.

5782

Paul Berger—For People—Cross

Q. Were you questioned about the defendant Buchalter—yes or no? A. I think I was; I am not definite.

Q. And in reply to the questions they asked you did you say to them that you never gave any money to Lepke and you had never had any kind of business with him whatever?

Mr. Turkus: I object unless there is some alleged statement.

5783

Mr. Barshay: You know there could not be such a thing that I would have in my possession—a statement from Mr. Dewey's office.

Mr. Turkus: It looks awfully suspicious to me.

Mr. Barshay: I take an exception to that remark.

Mr. Turkus: I object to this procedure.

Mr. Barshay: I am trying to show a prior inconsistent statement.

By the Court:

5784

Q. Do you remember on any occasion at all that you were interviewed in Mr. Dewey's office, stating that you did not give money to Lepke—

Mr. Barshay: Or have any kind of business with Lepke.

A. I do not definitely remember it.

By Mr. Barshay:

Q. You would not deny it? A. No, I don't remember.

Mr. Turkus: I object to his not denying it.

The Court: He says he does not definitely remember. That is an answer. The objection is sustained to the last question.

Q. When were you definitely put on the payroll of the union as a strong-arm man, what year?

Mr. Turkus: I object to the form of the question; there is nothing in the record to show he was definitely put on any payroll. He showed his slugging in connection with his union work.

5786

The Witness: I was not out on the payroll then.

By Mr. Barshay:

Q. What year were you put on the payroll as a slugger? A. I was not put on as a slugger.

Q. When did you stop really working as a cutter? A. When I started to take a contract for the Worlds Clothing Exchange.

5787

Q. What year was that? A. 1933 or 1934, I don't definitely remember.

Q. When were you put on the payroll of the union, the payroll, without doing any work as a cutter—strictly working for the union? A. Never.

Q. Never? A. No, sir.

Q. You never got money from Weinstein? A. I did.

Q. What year? A. I worked also as a cutter.

Q. I am now speaking of any time when you

5788

Paul Berger—For People—Cross

worked strictly for the union and Weinstein was in charge, or anybody was in charge, when you did not work as a cutter. A. Then I was in business for myself, when I started working for the Worlds Clothes, when I started contracts.

Q. How long were you at the Worlds Clothing Exchange? A. I would say about two years.

Q. What years were they, if you knew? A. I don't know definitely—'33, '34 or '35.

5789

Q. After you finished that connection, did you go back to the Union on the payroll? A. Finished what connection?

Q. With the World's Clothing Exchange. A. No, sir.

Q. When did you go back on the Union payroll? A. I still was on the payroll but I still had my business.

Q. I get you. In other words, while you were conducting your business, the Union kept you on their payroll? A. I was one of them.

Q. That is right. How many years? A. Until I was arrested.

5790

Q. June 5, 1941. The defendant Buchalter you saw for the last time, as you say, in June of 1937?

Mr. Turkus: Objected to as repetitions.

Q. Did you?

Mr. Turkus: Objected to, repetitions.

Mr. Barshay: Trying to fix the date for the next question, Judge.

The Court: Overruled.

A. Yes, sir.

Q. So while the defendant Buchalter was away up until June 5, 1941, you were on the Union payroll, is that so? A. That is right.

Q. Even though you were in business for yourself? A. That is right.

Q. Or business with some one else? A. That is right.

Q. Can you tell me how much you were getting a week? A. \$50. a week.

Q. Every week? A. That is right.

Q. Can you tell me how much you were earning per week in your private business? 5792

Mr. Turkus: That is objected to. That neither goes to credibility nor the issue.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Did you report the \$50 a week in your income tax? A. No, sir.

Q. Never? A. No, sir.

Q. Did you get any other advantages from the Union other than being on the payroll since you saw the defendant Buchalter in June of 1937? 5793

A. Did I what?

Q. Did you get any other advantages? Were there any other favors extended to you by the Union other than your payroll? A. Favors?

Q. Yes. A. Not that I can definitely say.

Q. I will try to refresh your memory. Did you conduct businesses yourself, contracting businesses? Did you—either yourself or as a member of a firm?

Mr. Turkus: I object to that. This does not go to credibility. This neither

5794

Paul Berger—For People—Cross

affects his credibility nor has it anything to do with the issue we are trying, this murder case.

The Court: Sustained.

Mr. Barshay: Exception.

5795

Q. Were you allowed by the Union to conduct non union shops since 1937? A. It was not on account of me; it was on account of your client, on account of Mendy. I was only a front over there.

Q. You mean on account of Mendy, my client? A. I don't know who.

Q. I am not his attorney; he has a much better one in Judge Talley and in Mr. Cuff. A. I was only fronting there. Mendy was the boss, if you want to know something.

Q. Judge Talley will take care of that. But were you getting that advantage from the Union? Were you allowed to run non-union shops in your own personal business? Yes or no. A. It was not my personal business.

5796

Q. Did you have a share in it? Yes or no. A. No, sir, I did not.

Q. Did you profit by it, if you wish? A. I was getting paid. Most of it I handed over to Mendy. I only got a little bit of it.

Q. A little bit? A. Even handed over the money I got from the Union to Mendy, now if you want to know something, the \$50 a week I handed that over.

Q. Judge Talley will take good care of that. I am trying to find out about my defendant. Were you a partner with a man by the name of Nathan Berger? A. I was not a partner. He was a partner, not me.

Mr. Turkus: Who is "he"?

The Witness: That Berger was, not me. When you see me, you see Mendy.

Q. You said before you would not volunteer, Berger. Do you mind doing that, please, not volunteering? Mr. Turkus will have another chance with you and you can tell him all you want.

Mr. Turkus: I object to this. This is not a question. (To reporter) Will you read it?

5798

(Remarks of Mr. Barshay read.)

Mr. Barshay: Will your Honor please tell the witness not to volunteer anything other than in response to a question?

The Court: Yes.

Mr. Turkus: In this specific instance where he brought out about Mendy Weiss—

Mr. Barshay: Will you stop arguing?

Mr. Turkus: In this specific instance of the defendant Mendy Weiss, the witness did not volunteer but he responsively answered the question as to the things in that particular firm.

5799

The Court: The Court understands.

Q. What was the name of this concern that you had some interest in with Nathan Berger? A. Berger Clothing Company. Let us presume that I did not have the interest.

Q. Were you drawing \$100 a week? Yes or no. A. Two hundred.

Q. Please, Berger— A. \$200 a week I said.

5800

Paul Berger—For People--Cross

Q. Were you drawing \$200 a week? A. That is right. Half of it went to Mendy.

Mr. Talley: I move to strike that out, if your Honor please. I listened long enough to this stuff, and I now move to strike out that part of the answer as not responsive.

The Court: Strike it out.

5801

Q. Was this business at 57 Thames Street in the Borough of Brooklyn? A. That is right.

Q. How long were you in that business? A. What business?

Q. In this business? A. Since they formed the Berger Clothing Company.

Q. How long, please? A. Say about two years.

Q. How much were you getting out of it for yourself? A. A hundred a week.

Q. That was a non union shop, wasn't it? Yes or no? A. It was.

5802

Q. You did not put any money into this business, did you? A. Neither did Mendy.

Mr. Talley: I move to strike that out, if your Honor please.

The Court: Strike it out.

Mr. Talley: And I think your Honor should now instruct this witness, if instructions mean anything to him, again not to volunteer answers of this kind. He is a little over anxious.

Mr. Turkus: I object to that.

The Court: Don't volunteer explanations.

The Witness: I have to say that in order to explain myself. I am getting accused of something that isn't so. I was nothing over there. Mendy was the boss. I was no partner there.

Mr. Talley: I move to strike that out, and I ask your Honor to instruct the jury at this time to disregard it.

The Witness: A lousy \$50. a week I have to give up, too.

The Court: Strike it out.

The Witness: Good thing he didn't ask me to give my wife up, too. I would do that, too.

Q. You gave your wife up a long time ago, didn't you, Mr. Berger? A. No, sir.

The Court: Does it impeach credibility if a man engages in non-union business?

Mr. Barsbay: Oh, no. I am trying to show, sir, that he muscled into a firm and continued there—

The Witness: I did not muscle in.

The Court: You have not touched that point.

Mr. Barsbay: I can only do it one step at a time, your Honor.

The Witness: Mendy put me in as a front there. Mendy muscled in, not me.

The Court: Why not get down to the point? This is collateral. It is of no value unless it tends to show that he is dishonest.

5806

Paul Berger—For People—Cross

Mr. Talley: I move to strike out that reference to Weiss.

The Court: Strike it out.

The Witness: I was put in there as a front and there was thousands of dollars coming out of there besides that hundred dollars a week that I gave up.

Mr. Talley: Will your Honor strike that from the record and direct the jury to disregard it?

5807

The Court: Strike it out. The jury will disregard it.

The Witness: And what is more, I had to pay income tax on money I gave him. The money I gave him I had to pay income tax and pay him. I am still paying some of that money that Mendy got.

The Court: Please, no more of that.

Mr. Turkus: Mr. Barsbay said, "Go ahead".

The Witness: I am paying income tax and still paying it on the money I gave to Mendy.

5808

The Court: Five minute recess. The witness will be taken out. When you come back, no more of that.

Mr. Talley: I want your Honor to instruct the jury to disregard that.

The Court: Pay no attention to it. It is obvious the man, in persisting, thought he had the floor and the Court had no gavel.

(After a short recess the witness resumed the stand.)

Q. Do you know the month you disassociated yourself from the Berger Clothes? A. The month I associated myself?

Q. Disassociated yourself? When you stopped with the Berger Clothes? A. Yes, then we formed a corporation. First it was a partnership.

Q. Yes, but when did you stop being connected with Berger Clothes? A. Completely?

Q. Yes. In 57 Thames Street? A. Over a year.

5810

Q. 1946? A. It was in 1940.

Q. Do you remember during the last month that you were there, a nineteen year old boy by the name of Tony Brusillier of 102 Harrison Place, coming up there and asking you for a job? A. That is right.

Q. At that time were you having coffee and rolls? A. That is right.

Q. On the desk? A. That is right.

Q. Do you recall whether or not you gave him a job? A. No.

Q. Did he tell you that he had not eaten for two weeks? A. No, sir.

5811

Q. Did he ask you for some coffee and rolls? A. No, he did not.

Q. Did you offer it to him?

Mr. Turkus: I object to it.

Mr. Barshay: Just wait a while.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Did you then grab him by the collar, beat him up against the wall, cut his lip, and throw

5812

Paul Berger—For People—Cross

him downstairs? Did you? A. I will tell you why.

Q. Go ahead. A. I was in the office and he came walking in and I asked him what he is looking for. He said he is looking for a job. I said, "We are not open for any one now." He said, "All you Jews are alike." So when he said that, that's just what I done.

Q. You busted his lip? A. I did not.

5813

Q. Did you throw him down the stairs? A. And then he started to fighting. That is just what he said to me.

Q. Do you remember—

Mr. Turkus: Just a minute. Anything under those circumstances does not affect the credibility of a witness.

Mr. Barslay: I object to the comment of counsel.

5814

The Witness: What would you do if you were in a place of business and somebody comes in for a job and you told him you don't need any one and he said, "All you Jews are alike," and he starts to wrestle me. I told him to go out. I should have had him arrested. When he told me he has not eaten, then I brought him coffee.

The Court: That was afterwards?

The Witness: That is right.

Q. You gave him coffee afterwards? A. That is right.

Q. Where? A. In the place.

Q. Didn't your partner's brother-in-law take

that boy immediately to a doctor and have his lip stitched? A. I don't remember that.

Q. Didn't your partner continue to pay the expenses, medical expenses, for that boy?

Mr. Turkus: I object to that. That does not affect credibility. That merely shows an act of being a good Samaritan under those circumstances.

The Court: Sustained.

The Witness: Yes, and I told him that—

Q. You were a good Samaritan with that boy?

A. What would you do if anybody come into your place of business and acts that way? I thought he was looking to burglarize the place, and so he came walking in. You are a lawyer. If you have somebody coming into your office like that, what would you do if he says to you, "All you Jews are alike," what would you do about it? I don't think you would buy him coffee after that neither.

Q. Finished? Did your partner, Nathan Berger, and you have an argument over that incident; yes or no?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Did you say to Berger, "If I was not in trouble with Dewey, I would break your God damn neck"? Did you say that? A. Absolutely not.

Q. Did Berger say to you then, "I am an ex-

5818

Paul Berger—For People—Cross

Army man. Go ahead and do it"? Did he?

A. Absolutely not.

Q. Wasn't that the last day that you were in that place? A. Absolutely not. We were on friendly terms. I never had an argument with Berger.

Q. You were on friendly terms with Berger?

A. Absolutely.

Q. You still are? A. I don't think now. I was at the time, until I left that business, very friendly terms.

5819

Q. You say until you left that business you were on very friendly terms with him? A. That is right.

Q. There is litigation pending between you and him for money that you overdrew, isn't there? A. There is.

Q. Isn't there? A. There is.

Q. And he charged you with taking money from the business without his permission or consent, isn't that so? A. That is not so.

Q. Isn't that the litigation that is pending now? A. No.

5820

Q. Yes or no. A. No, sir.

Q. Is there litigation pending? A. There is. He is suing me.

Q. Is it for money? A. That is right, for some of the money I took and gave to Mendy.

Mr. Talley: I move to strike that out.

The Court: Strike it out.

The Witness: Because he would never give me a nickel unless Mendy sent word to give him the money.

The Court: That is too far afield.

The Witness: Because Mendy was the boss there; I was not.

Mr. Talley: I move to strike that out.

The Witness: He would not give me any money unless Mendy said so.

The Court: Strike it out. No more about Mendy.

Q. You spoke, at page 1651, substantially about a meeting at a Governor Clinton Hotel with respect to the stoppage. Do you remember that?

5822

A. That is right.

Q. Did you see Rubin at Fifth Avenue during that stoppage? A. I think I did.

Q. Did you see him do anything? A. I don't remember.

Q. Is that the time when the striking employees lay down at Fifth Avenue and 17th and 16th Streets and refused the trucks permission to go? A. That is right.

Q. Did you beat up anybody then; yes or no? A. I don't recollect.

Q. What? A. I did not. I don't recollect whether I did or not.

5823

Q. Page 1653, on direct examination, were you asked by the Court:

"Yes, tell what you did.

"The Witness: We stopped trucks, sluggish the drivers, things along those lines."

A. I said that. It was me and maybe about two hundred others, maybe five hundred, maybe two thousand.

5824

Paul Berger—For People—Cross

Q. It included you? A. I was one of them, yes—had a whole union stopped at that time, and got a 50,000 membership, I think, in New York City alone.

Q. Did Rubin point out anybody to you? A. He did not.

Q. Did you see him do anything at all— A. I did not.

Q. With respect to that strike? You knew that Danny Fields fled from the Dewey investigation, did you not? A. I did. Lepke's orders.

5825

Mr. Barshay: I move to strike out the answer, sir.

The Court: Strike out the last part.

Mr. Barshay: Will your Honor tell this witness again not to volunteer?

The Court: Volunteer nothing, just answer the questions.

Q. When do you say, to your personal knowledge, the defendant Buchalter's connection with the union ended? A. Will you repeat that question again?

5826

(Pending question read.)

Mr. Turkus: He never did say that.

The Court: Is that an objection?

Mr. Turkus: Yes, there is an objection as to the form.

The Court: Sustained as to form.

Q. Do you know when the defendant Buchalter's connection with the union ended?

The Court: Do you know if it did?

The Witness: What do you mean by "connection"? I don't think — It ended?

Q. Please, Berger. You say you saw Buchalter for the last time in 1937, is that correct? A. Yes.

Q. You did not see him again until you saw him in court? A. That is when he got off the payroll, in 1937. That is when he got off the payroll from the Amalgamated Clothing Workers. Until then he was on the payroll.

5828

Q. After that, to your knowledge, he was not? A. That is right. I was told that they would not give him any more money.

Q. That is right, isn't it, after 1937 you say he was not on the payroll? A. I was told they would not give him any more money. That is what I was told, the exact words.

Q. You said here that on the Friday before the killing of Rosen you were at the clothing cutters' headquarters, is that correct? A. That is right.

Q. What was the address of that concern? A. What concern?

5829

Q. Clothing cutters' headquarters, call it the union headquarters, or concern—call it what you want— What was its address? A. On 15th Street and Union Square, in the Amalgamated Bank Building.

Q. What floor? A. Top floor.

Q. What was the address of the Truckmen's Association, New York Truckmen's Association, that day? A. What was the address of it?

Q. Greater New York Truckmen's Association? A. On 17th Street, it was.

Q. Do you know the exact address? A. No.

5830

Paul Berger—For People—Cross

Q. Do you know the building? A. That is right.

Q. Do you know between what avenues? A. 17th Street and Union Square.

Q. And there is no doubt, Berger, that Rubin saw you that Friday, September 11, 1936, at the clothing cutters' headquarters? A. That is right.

Q. That is what you testified to? A. That is right.

5831

Q. Now, will you give me the time? A. About five o'clock.

Q. Had you had your lunch that day? Had you eaten that day? A. I was not sick. I must have eaten.

Q. Was it your custom on Friday nights to go home and have dinner with your family? A. Not all the time.

Q. Not every Friday night? Do you know whether that night you did? A. I did not.

Q. Don't be mad at me. I only asked you whether you did or you didn't. A. I didn't.

5832

Q. When did you look at a clock, to your knowledge, or a watch, before Rubin came to see you that day at the clothing cutters' headquarters? A. I don't remember.

Q. But it was about five o'clock? A. To the best of my recollection.

Q. What was the usual time on Fridays that you left the clothing cutters' headquarters? A. There was no usual time.

Q. Was it before supper hour? A. As a rule.

Q. Supper hour, would you say, was six o'clock, about? A. Sometimes there Friday until seven. Sometimes there is meetings. They are there until eight and nine. There was meetings on Friday nights.

Q. Do you know whom you were talking to when Rubin came? A. I was just walking out.

Q. You were going home, do you recall? Do you know where you were going? A. I don't remember definitely.

Q. He gave you a message, didn't he? Didn't he? A. That is right.

Q. Do you know what time you got to see Buchalter? A. After he told me, I went over.

Q. How long after? A. I walked all the way up.

5834

Q. How long did it take you? A. I just can't remember. Maybe I said, "Hello", to a person here or there. I just don't remember when I got there.

Q. You remember definitely Rubin coming up? A. Definitely.

Q. But you don't remember meeting anybody on the way? A. No, sir.

Q. Do you remember what entrance you came into the premises? A. I do. What premises?

Q. Wherever you saw Buchalter? A. That is right.

5835

Q. What entrance? A. On the Fifth Avenue side.

Q. Walked right in through the street? A. That is right.

Q. Walked into the elevator? A. That is right.

Q. Right into the elevator? A. That is right.

Q. Went right up to see Buchalter? A. I got off on the floor above and came down.

Q. Did you know an employee by the name of Cohen who worked for Buchalter then, Louis Cohen—Frank Cohen? A. If I see him, I may know him.

5836

Paul Berger—For People—Cross

Q. Did you ever see an employee of Buchalter's at that office? A. I seen a girl, a couple of girls.

Q. Was the girl there? A. I seen a couple of girls.

Q. Never a person by the name of Frank Cohen? A. If I see him, I may know him.

Q. Was the girl there that day? A. What day?

5837

Q. The day that you went up to see Buchalter, September 11, 1936? A. I can't say that definitely.

Q. You don't recollect that either? A. Because I didn't walk into the office. I just opened the door and he seen me and he walked out.

Q. It was a little bit of an office, wasn't it? A. What would you call a little bit of an office?

Q. Describe the size yourself. A. Well, as you walked in there was a desk and a telephone. Then they had one—like after his desk and telephone, then there was one room there; there was another little room on this side.

5838

Q. In the room in which Buchalter was? A. He was out front. When I opened the door he seen me.

Q. The room whose door you opened, was that a big room or a small room? A. Small room.

Q. Look around in back of you. There is a big board there. Was the room much bigger than that board? A. What board?

Q. This blackboard right in back of you? A. Bigger than that?

Q. Was the room bigger than this blackboard, and if so, how much? A. You are asking me ridiculous questions. Did you ever see a room as big as that?

Q. I have seen lots of rooms as big as that.
A. Would you be able to walk into it?

Q. How many times the size of that black-board is that room, do you know? A. I am not a mathematician. I didn't go to college. How can I tell you how large? Can you tell me how large?

Q. I want to know the size of that room, to the best of your recollection. A. I can't say unless you showed me a little office here.

Q. Buchalter said to you, "You know that Joe Rosen," didn't he? A. That's right, he did.

Q. He asked you whether or not you knew Joe Rosen, didn't he? A. That is right.

Q. And you said, "Yes"? A. Yes.

Q. And then, in the hall, he said to you, "I want you to point out that Joe Rosen"? A. That is right.

Q. Then you claim you went down with Mendy and you did, is that right? A. That is right.

Q. Berger, don't you know as a fact that Mendy Weiss and Joe Rosen had worked together for one employer for a period of one year? A. I do not. Absolutely. Worked as what? Mendy ever work as a truckman? Is that what you are trying to tell me? Are you trying to tell me that Mendy worked as a truckman? Answer my question, will you, please? Are you trying to tell me that?

Q. Finished? A. That is right.

Q. Don't you know that Mendy Weiss and Rosen rode the same truck in the Borough of Manhattan, City of New York, when Rosen worked for Cooper? A. I do not.

Q. Please—

5842

Paul Berger—For People—Cross

Mr. Turkus: Please what? That is an answer.

Mr. Barshay: Let me finish.

Q. When Rosen worked for Cooper on Bleecker Street, in the Borough of Manhattan?

Mr. Turkus: The question has been answered.

5843

A. I do not.

Q. Don't you know that Weiss and Rosen knew each other personally and intimately? A. Then why did he tell me to point him out to him? I wish to hell he wouldn't have told me to point him out.

Q. The jury may answer that, Berger; I won't.

A. Why the hell didn't he go himself? Why the hell did he want me over there for if he knew him? I wish I had never gone over there. From your estimation that he knew him, then what the hell did he need me there?

5844

The Court: No more.

Mr. Barshay: May we suspend now?

The Court: We will reassemble promptly. All counsel be here at 1:30.

Gentlemen, please remember the previous admonition in all respects. Follow it.

First, the witness will be taken out.

Now the jury taken out by the other door.

Now the defendants are remanded.

(Recess until 1:30 P.M.)

AFTERNOON SESSION—TRIAL RESUMED

PAUL BERGER, resumed the stand and testified further as follows:

Cross-examination by Mr. Barshay (continued):

Q. Berger, did you see Weinstein on September 11, 1936? A. I seen him in September.

Q. I am now speaking of September 11th. Do you know what day that was? A. Was that before the murder?

5846

Q. Yes. Did you see Weinstein? A. What day is September 11th?

Q. You tell me. A. I ask you what day is September 11th, Monday, Tuesday, Wednesday?

Q. You remember everything else. Can you tell me what day of the week it was? A. I don't remember that. Tell me the day.

Q. You cannot tell me? All right, I will tell you. Friday, September 11th. A. That is right.

Q. Did you see Weinstein that day? A. I did.

Q. Where did you see Weinstein that day? A. I think it was the Cutters' Local.

5847

Q. Was it before you received your message from Rubin? A. I think it was.

Q. What? A. It was before.

Q. Did you communicate to Weinstein the message you received from Rubin?

Mr. Turkus: I object.

A. Did I what?

Q. Did you tell Weinstein the message you got from Rubin? A. No.

5848

Paul Berger—For People—Cross

Q. You did not tell a soul, did you? A. Will you repeat that question?

(Pending question read.)

A. The one before that.

(Question preceding read.)

A. That is right.

5849

Q. Did you see Weinstein at the same place that you saw Rubin that day? A. I am not sure.

Q. Well, that was the Clothing Cutters' Headquarters, wasn't it? A. That is right; maybe a time when he is not there.

Q. You know best. You tell me. Did you see him, meaning Weinstein, at the Clothing Cutters' Headquarters that day? A. I would not say definitely.

Q. How long were you at this Clothing Cutters' Headquarters that day? A. Maybe about 15 or 20 minutes.

5850

Q. What time did you get there? A. I did not look at the time when I walked up there.

Q. How close to five o'clock? A. A little over 4:30, maybe.

Q. Do you know where you had been before that day? A. I was in my place of business.

Q. Where was that? A. I think it was at that time 714 Broadway.

Q. Manhattan? A. Manhattan.

Q. Was that the only time that day you saw Rubin? A. That is right.

Q. When you came to the headquarters of the Clothing Cutters, did you see Weinstein there?

A. Well, I can't say that definitely. I answered that before.

Q. You say you stayed 15 minutes; is that correct? A. 15 or 20 minutes.

Q. Did you come there for any special purpose that day? A. Well, it was more or less of me coming up there almost every day. I understand what you are driving at, if I go up there for the money I used to bring Lepke. Sometimes I used to get the money on Thursday, sometimes Friday, sometimes Wednesday. The reason for that was he thought he was being watched for Mr. Dewey's office, and Mr. Weinstein told me, "Lepke told me don't go up there all the time the same day for the money," but I used to go up there, regardless of why I used to go up there.

5852

Q. He told you he was being watched by the police very carefully? A. Or maybe there may be a Dewey man who saw me going in there every time the same time.

Q. In other words, he told you he had to be very careful whom he meets? A. Who told me?

Q. Buchalter. Buchalter told you he has got to be very careful whom he meets? A. So did Weinstein and Katz.

5853

Q. They told you, too, that Buchalter has got to be very careful whom he meets? A. Meaning officials.

Q. Police? A. I said officials.

Q. Not detectives? A. What do you mean?

Q. In other words, Berger, the idea expressed to you or told to you by Weinstein and Katz and Buchalter all together, substantially was that the police from Dewey's office are watching Lepke very carefully, and they want to know, the police

5854

Paul Berger—For People—Cross

want to know and Dewey's office want to know whom Lepke was meeting, whether it was union officials whom he was meeting; right? A. That is right.

Q. You stayed at the Clothiers' Local, 15 minutes, you say? A. Around that.

Q. Did you get your money then? A. I don't remember whether I got it that day or the day before. Not my money. It was my money, Lepke's money, and Danny's money, not my money alone.

5855

Q. You said that. I asked you did you see Weinstein during those 15 minutes? A. I can't say definitely.

Q. Did you see Weinstein when you left? A. No.

Q. Did you leave alone or with Rubin? A. I left alone.

Q. Where did Rubin stay? A. I think he remained there; I am not definite.

Q. You did not ask Rubin why Buchalter wants to see you, did you? A. No.

5856

Q. And he did not tell you? A. No.

Q. You were told the message? A. That is right.

Q. He has done that before? Has he done that before? A. Very seldom.

Q. But he has? A. At one time or another.

Q. When you went into the 200 Fifth Avenue, it was to see Buchalter at the Raleigh Clothes? A. That is right.

Q. Did you see any detectives whom you recognized as you entered the building? A. No.

Q. As you got off the elevator, did you see any detectives in the hall? A. No.

Q. Do you know the elevator boy who operated the elevator? A. I do not know. There is quite a lot of elevators there.

Q. Did you know any of them? A. No. I made sure that I would not.

Q. What? A. I was pretty careful they should not know me.

Q. Did you hide your face? A. No.

Q. You walked in normally, did you not? A. There is thousands of people walking in there every day.

Q. To your knowledge, the Police Department had a picture of you, did they not?

Mr. Turkus: I object to that.

Mr. Barshay: I am trying to prove something, your Honor.

The Court: Overruled.

Q. Did you not? A. I did not.

Q. Well, you had been photographed by the Police Department on prior occasions, had you not? A. I was.

Q. Then they had a picture of you to your knowledge, didn't they?

Mr. Turkus: Objection. That does not follow.

A. They had it in Headquarters.

Mr. Turkus: Even that does not follow.

The Court: It is only an argument. Sustained.

Mr. Tarkus: At certain times prints and pictures are returned.

5860

Paul Berger--For People--Cross

Q. Well, did you get any pictures back from the Police Department? A. What?

Q. Did you get any of the pictures that were taken of you by the Police Department? Did you ever get them back? A. Did I get any of them?

Q. Yes. A. What did I need them for?

Q. I asked you if you ever got them back from the Police Department. A. I asked them. I wish I could get them back.

5861

Q. But you did not get them back, so they had them? A. That is right.

Q. Did Buchalter tell you that even the elevator boys in the building were instructed to watch who was going into the Raleigh office? A. If he ever told me that?

Q. Yes. A. No, sir.

Q. Did he tell you that even the elevator boys were given pictures of certain people for them to look at? A. That is the first time—

Q. Well, if he did not, he did not. I am trying to find out from you. A. The first time I hear it.

5862

Q. Did Buchalter tell you that even the taxicab drivers in the vicinity of Raleigh and in the vicinity of his home had been picked up and questioned by the police every time Buchalter was taken for a ride as a passenger? A. This I don't know.

Q. Did he tell you that they inquired of the taxicab drivers at Police Headquarters and at Dewey's office where they took Buchalter from and where they took him to? Did he tell you that? A. Don't know anything about it.

Q. You claim you saw, as you opened the door, someone in the office, did you? A. Lepke.

Q. That is all? A. That is right.

Q. Anybody else? A. Well, there was some people in there, but I didn't take notice. He just walked out as I opened the door. As soon as he seen me he walked towards me.

Q. Did he have his hat and coat on? A. No.

Q. Did he go back into the office to put his hat and coat on? A. After he told me to wait for him down by the stairs.

Q. He went back and got dressed? A. Put his hat on and came out.

Q. Did you go back into the office with him? A. No, I did not.

Q. So that you know nobody who was in that room from the moment you opened the door until the moment you left? A. Will you repeat that question, please?

(Pending question read.)

A. No, I could not identify anybody.

Q. Not a soul? Did you know there was a Dictaphone in that office? A. I didn't know that.

Q. Were you told there was a Dictaphone in that office? A. I was told there may be.

Q. You were not told that it was sure? A. No, Lepke told me that office may be wired.

Q. Did you and Buchalter ever look around the office to see whether or not there were any wires? A. No.

Q. Or Dictaphones? A. I did not.

Q. You know the telephone was tapped by Dewey's office? A. I did not know that.

Q. Were you told that? A. I was told it may

5866

Paul Berger—For People—Cross

be tapped; that's why I never called; I always come up in person.

Q. You and he went down in the elevator together, did you not? A. That's right.

Q. What floor did you leave from? A. From the floor below.

Q. How long had Buchalter been in that building as a tenant, if you know? A. I cannot say that definitely.

Q. A few years? A. What?

5867

Q. At least a few years? A. I cannot say it definitely.

Q. At least one year, if you know?

Mr. Turkus: I object to it because it had there, "as a tenant"—

The Witness: You have got it on record. You know when he moved in; I don't.

5868

Q. I know when he moved in and when he moved out. I want to know whether you know that. A. I know when Danny was told to go away by Lepke and I was told to deliver messages and other things to it. Then I knew he was up there, but I don't know how long.

Q. You say Danny was told to go away by Lepke; is that right? A. Positively.

Q. Did you ever tell anyone that Weinstein told Danny Fields to go away? A. Don't be ridiculous.

Q. I should not be ridiculous? A. That is right.

Q. Did you tell that to an Assistant in Dewey's office? A. I never spoke to anyone, to an As-

sistant, in Dewey's office. I would not talk to him, if you want to know the truth.

Q. I know the truth. A. I am telling the truth now.

Q. Did you tell it to anyone at all? A. That what?

Q. That Weinstein told Danny Fields to go away. Did you? A. No, sir.

Q. Were you up to a lawyer's office at 51 Chambers Street in the Borough of Manhattan? Were you? A. By the orders of—

Q. Please. Were you there? A. Just a minute— By the orders of Mendy Weiss.

5870

Mr. Barshay: Your Honor, I ask this man to please be told—

The Witness: Yes, I was told to go up there.

Mr. Barshay: —not to volunteer.

The Witness: I was told to go up there by Mendy. I was told to go up there, and I knew what would happen to me if I didn't go up there.

Mr. Barshay: I move to strike out the answer.

5871

The Court: Strike out the latter part.

Mr. Barshay: I move for the withdrawal of a juror and declaration of a mistrial.

The Court: Motion denied.

Mr. Barshay: Will your Honor please tell this witness again not to volunteer any information?

The Court: The Court was about to do that.

5872

Paul Berger—For People—Cross

Mr. Barshay: All right, sir, I thank you.

The Court: Just answer the question, no more. Volunteer no information.

Q. Did you go up to a lawyer's office at 51 Chambers Street? A. What was the name of the lawyer, please?

5873

Q. What difference does that make? A. It does make a difference. There is a number of lawyers that I know in that building. What lawyer are you referring to?

Q. Did you go up to any lawyer at 51 Chambers Street and speak to him with respect to the investigation that Dewey was conducting then?

Mr. Turkus: I object to it on the ground that the name of the lawyer be fixed, as the witness asked. There are a number of lawyers in the building.

The Witness: That I know.

The Court: Sustained.

Mr. Barshay: Exception.

5874

Q. Whoever the lawyer may have been, did you ever tell him that it was Weinstein who told Danny Fields to go away? Did you tell him? A. If you will tell me who the lawyer is, then I will answer that question. There was a number of lawyers in that building.

Q. Did you tell it to any lawyer in that building?

Mr. Turkus: I object. I ask that the name of that particular lawyer be revealed.

The Court: Overruled.

Q. Did you tell it to any lawyer in that building or any building in this Universe, that Weinstein was the one who told Danny Fields to leave town? Did you? A. Can you tell me the name of the lawyer?

The Court: Yes or no.

The Witness: Yes, by the instructions of Mendy.

Mr. Barshay: I move to strike out the latter part of the answer and that only that part which is responsive stand.

5876

Mr. Turkus: Of course, under those circumstances any inconsistent statement would not impeach his credibility here, if that is the fact, as testified to. I think the answer should stand.

The Court: If you will make a memorandum of these so you do not forget them on redirect, you won't have to worry about it. It is stricken out.

Mr. Turkus: I am not worried about it.

Q. As you got into the elevator with Buchalter, did you know whether or not he said, "Hello" to the elevator boy? A. No.

5877

Q. Was he disguised—Buchalter? A. No.

Q. No smoked glasses? A. No.

Q. Walked right into the elevator, rode down with you? A. That is right.

Q. Walked out of the building in the main entrance? A. There was quite a number of entrances there.

Q. What entrance did he walk out with you, what exit or entrance? A. I think it was—

5878

Paul Berger—For People—Cross

The Court: Not what you think; do you remember?

The Witness: The front entrance.

Q. 200 Fifth Avenue? A. That is right.

Q. There is a cab line there? A. There is.

Q. Hailed one of the cabs right on the line?

A. No.

Q. Where did you go for a cab? A. A cab passing by.

5879

Q. Hailed it right from the street? A. Walked up a bit, not in front of the door.

Q. Right in the public street? A. What is that?

Mr. Turkus: Every street is public.

The Witness: Walked up a bit, away from the building.

Q. How far did you walk? A. Crossed over to Broadway, 23rd Street.

5880

Q. How far? A block, half a block? A. That is a corner there with a number of streets coming in. It is more or less of a square, to a certain extent. We walked up towards Broadway.

Q. Did Buchalter turn around to see if anyone was following him? A. That is right.

Q. A lot of people were following, were they not? A. Walking.

Q. Directly behind him? A. That is right.

Q. You did not know any? A. No, sir.

Q. Then he hailed a cab? A. That is right.

Q. Both got in? A. That is right.

Q. As far as you could learn, or as far as you knew then, Buchalter did not know that cab driver, did he? A. No.

Q. It was an ordinary passing cab? A. That is right.

Q. You and he sat in the cab? A. That is right.

Q. Did you hear Lepke giving instructions to this cab driver? A. That is right.

Q. What did he say? A. Just "Ride downtown."

Q. That is all? A. Just a minute. That ain't all. When we rode down a way, then he says, "Go over to Suffolk and Grand."

5882

Q. Is that all? A. And while riding in the cab, we were looking back in the window.

Q. You were looking back? A. Not me.

Q. Buchalter? A. That is right, to see if anyone was following us.

Q. There were cars following you? A. I don't know what he was watching; watching to see if he was being followed by cars.

Q. There were cars following you? A. There was a lot of cars riding.

Q. Have you told us all the instructions he had given to that cab driver? A. That is right.

5883

Q. He has not given another instruction in your presence and hearing? A. Not that I know.

Q. Right? A. Yes.

Q. You were there all the time and immediately alongside of Buchalter? A. That is right.

Q. So that Buchalter did not tell this cab driver through which streets to go, did he? A. He was telling him to go downtown.

Q. He did not tell him through which streets to go, did he? A. No.

Q. The cab stopped at the street you said? A. What? Grand and Sutter.

5884

Paul Berger—For People—Cross

Q. It did? Cab man paid? Cab man paid?

A. Cab paid.

Q. Who paid him? A. Lepke.

Q. You both stood on the street corner? A. That is right.

Q. The cab went on? A. That is right.

Q. No instructions given to the cab driver by Buchalter after that? A. No.

Q. Then there was some talk with an unknown man and then Mendy Weiss came over? A. We walked down towards Broome Street.

5885

Q. Right in the street? A. That is right.

Q. Both of you? A. Both of us.

Q. How long a time elapsed before Mendy Weiss comes along? A. About 10 minutes.

Q. During the 10 minutes, where were you and Buchalter? A. When we stopped near the corner there he said, "Go over and get Mendy. He is on the corner of Clinton and Broome." This fellow walked down.

Q. Where were you and Buchalter during that 10 minutes? A. I was standing with Buchalter on Suffolk Street, and as the man walked down, we turned around towards Broome Street.

5886

Q. Still no glasses on Buchalter's face, no smoked glasses? A. No.

Q. No collar up? A. No.

Q. Nor on yours? A. No, sir.

Q. About what time would you say, if you can tell us, when Mendy Weiss came along? A. I can't remember the time to the minute, but I can tell you about.

Q. About. A. To the best of my recollection it would be about six o'clock.

Q. Was it dark? A. No.

Q. Was it getting dark? A. No.

Q. Then there was a talk with Buchalter and Mendy? A. That is right.

Q. Were you told to keep out of that talk? A. No. Walked away on the side; don't think I was going to go over and listen what they were going to say. Do you get it?

Q. That was right on the street? A. That is right.

Q. Buchalter and Mendy talking? A. That is right.

Q. Light? A. Light.

Q. There was daylight saving time then; six o'clock would be really five o'clock; right? A. I know it was light.

Mr. Turkus: I object to the form of the question.

Q. How long did they talk? A. About 5 or 10 minutes, I would say.

Q. About a quarter after six or something like that? A. They did speak about 5 or 10 minutes.

Q. Well, you said you got there about six o'clock. A. Got where?

Q. At the corner? A. What corner?

Q. Suffolk and Grand. Did you? A. I did not say we got there at the corner at six.

Q. What time did you get at the corner? A. You did not ask me that question.

Q. Well, I ask you now. A. It would be near six o'clock.

Q. Then it took about 10 minutes to get Mendy and they spoke about 5 minutes, so I said to you it was about a quarter after six.

5890

Paul Berger—For People—Cross

Mr. Turkus: I object to it. That was because the witness has indicated an approximate time.

Mr. Barshay: I will withdraw it.

The Witness: I cannot remember definite on that.

The Court: Did you look at your watch at any time?

The Witness: No, sir, Judge; just a matter of the best of my recollection.

5891

Mr. Barshay: May I object to the question, if your Honor pleases? I move to strike the answer out.

The Court: Let it stand.

Mr. Barshay: Exception.

Q. You did not hear a single word of the talk between Lepke and Mendy, did you? A. No, sir.

Q. What is the next thing Buchalter said? A. To whom?

Q. To you. A. He says, "You go with Mendy and point out Joe Rosen."

5892

Q. Did he tell you where? A. No.

Q. Did you know where? A. I did not.

Q. You did not know where Rosen had a candy store? A. No, sir.

Q. You never heard Rosen had a candy store? A. I heard it.

Q. Did you ever hear the address of that candy store? A. In Brownsville—all I knew.

Q. When did you see Rosen last before that day? A. Before what day?

Q. September 11, 1936. A. You mean on the Friday?

Q. Yes. A. About a week or 10 days before.

Q. Where? A. Around the clothing district.

Q. What time? A. During the day. I can't remember what time.

Q. Did you talk to him? A. I did not.

Q. When did you talk to him before?

Mr. Turkus: Objected to. That takes in an improper implication. The witness just said he did not talk to him.

The Court: Sustained.

Q. When did you talk to Rosen before September 11, 1936? A. Maybe a couple of weeks before that.

Q. Where? A. In the clothing district.

Q. Did you talk to him then? A. I did.

Q. Did he tell you about a candy store that he had? A. He did.

Q. Did he tell you that he was doing badly at the candy store? A. No.

Q. Did he tell you that he was there just with his wife and children? A. No.

Q. Did you hear he was doing very badly at the candy store?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Do you know whether or not Rosen had a partner in that candy store? A. I don't know.

Q. You know he did not have a partner, don't you? A. I cannot say either. I don't know.

Q. You know his son lived in Reading, Pennsylvania, at that time? A. I don't know that.

Q. Did you know that Rosen was the only per-

5896

Paul Berger--For People--Cross

son tending that candy store, the only male person tending that candy store? A. Did I know what?

Q. Did you know that Rosen was the only male person working in that candy store? A. I did not know that.

Q. Did you know that he could afford neither helper nor partner? A. I did not know anything about that.

5897

Q. Did you know that he was the only man tending that candy store?

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Now Buchalter leaves. You are left alone with Mendy; is that right?

Mr. Turkus: I object to it. I don't understand the question at all.

5898

Q. You understand, Berger.

Mr. Turkus: Just a minute.

Q. We are back again at the East Side, aren't we?

Mr. Turkus: There is a question and objection: "Now Lepke leaves." I object to it.

Mr. Barshay: I will fix the time and place, if you want it.

Q. Going back again to the East Side, after this talk with Buchalter, he leaves, does he? A. Yes.

Q. And you are left alone with Mendy? A. That is right.

Q. You know what I am talking about, don't you, what period? A. It was that Friday you are talking about.

Q. Yes. A. That is right.

Q. Where did you go with Mendy? A. We walked down towards Broome and Clinton.

Q. Did you meet anybody on the way? A. He did. I didn't.

Q. Whom did he meet on the way? A. I don't know. He spoke to some people.

Q. Did you know them? A. No.

Q. How long did he speak to them? A. About 10 minutes.

Q. You waited? A. That is right.

Q. That is about 6:25, isn't it?

5900

Mr. Turkus: I object.

Mr. Barshay: "About," I said.

Mr. Turkus: I object to it.

5901

The Court: He said he did not time himself.

Q. You set the time yourself, Berger. It is 10 minutes now after Buchalter leaves.

Mr. Turkus: I object to it, because if he cannot predicate the first time, anything upon that is speculation. That is my objection.

The Court: Pure guesswork. Sustained.

Mr. Barshay: Exception.

5902

Paul Berger—For People—Cross

Q. Where did you go after this talk that Mendy had with an unknown man? A. Went in to the restaurant.

Q. Do you know the name of it? A. No, it was a restaurant on the corner of Broome and Clinton.

Q. What kind, self-service? A. No; regular meals.

Q. What did you do there? A. We ate there.

Q. Both of you? A. Both of us.

5903

Q. You had your dinner there? A. That is right.

Q. How long did it take you to eat? A. Not only ate. There was some people coming in. We spoke there. We were sitting around there.

Q. Did you know any of them? A. Some of them I knew.

Q. Can you tell me their names? A. There was Farvei there.

Q. Anybody else? A. Some others there that I know.

Q. How long did you stay in the restaurant? A. Starting to get dark.

5904

Q. About that you are sure? A. That is right.

Q. Would you say you stayed in the restaurant about an hour or less or more? A. More.

Q. Would you say it was an hour and a half or two? A. I cannot say that definitely. The best I can say, that when we got out of there it was getting dark.

Q. Who go out of there? A. Me and Mendy.

Q. That is all? A. And others. There was a few others when we got out. Farvei, I think, was there.

Q. Walked out, right? A. That is right.

Q. Where did you go then? A. He talked to a couple of people there.

Q. For how long? A. Killed maybe another half hour or so, and I was hanging around.

Q. Was it dark by then? A. That is right.

Q. No doubt about it? A. That is right.

Q. Where did you go then? A. We got into the car.

Q. Where was this car? A. On Broome Street.

Q. Both of you got in? A. That is right.

Q. Only you two? A. That is right.

Q. You drove out to where? A. Saratoga and Livonia.

Q. How long does the trip take? A. We rode over there. I can't say how long the trip will take.

Q. A half hour? A. Around that.

Q. Traffic is pretty heavy over the Williamsburgh Bridge at that hour, is it not? A. No, not at that hour. Not heavy.

Q. Have you been over the Williamsburgh Bridge? A. Yes, many times.

Q. Have you been there between 5 and 8 o'clock at night? A. I have been through that hour.

Q. Isn't that the time that most people who live in Brooklyn and work in Manhattan travel, between 5 and 8? A. Towards 8 o'clock the traffic is not so heavy.

Mr. Turkus: I object to it. This is incompetent, irrelevant, immaterial. There is no time fixed.

The Court: It is purely argumentative. Sustained.

5908

Paul Berger—For People—Cross

Mr. Barshay: I except to it. It is going to be most vital. I wish you would allow me a little latitude in respect to this.

The Court: The Court can indulge you no more.

Q. Berger, as you crossed the Williamsburgh Bridge, was it— A. That is right.

5909

Q. —was traffic heavy or not? A. Not very heavy.

Q. How long would you say it took you and Mendy Weiss in that car to get to Saratoga and Livonia? A. Between a half hour and three-quarters of an hour.

Q. But it was absolutely dark? A. That is right.

Q. Lights of the car were on? A. Yes.

Q. On the way out, did you look back in the car to see if anyone was following you? A. We did.

Q. Lots of cars behind you? A. Yes.

5910

Q. On the way out, after you crossed the Williamsburgh Bridge and you went to Saratoga and Livonia, did you look to see if anyone was following you? A. You mean the car?

Q. Yes. A. Yes, we were riding through a lot of side streets.

Q. Was that because you knew then that the police or members of District Attorney Dewey's office were following you two? A. No, sir.

Q. Or Mendy? A. I don't know that.

Q. Were you told that by either Mendy or Buchalter? A. That I was followed by—

Q. That you were followed? A. No.

Q. That everyone in connection with Buchalter was being tailed? A. No.

Q. When you got to Saratoga and Livonia it was positively dark, wasn't it? A. That is right.

Q. How long did you stay there? A. About 10 minutes.

Q. How long did it take you to get to the candy store? A. What candy store?

The Court: Rosen's.

The Witness: What candy store?

The Court: Rosen's.

Mr. Turkus: Wait. The witness has something else in mind. He is talking times now. There was a candy store at Saratoga and Livonia.

The Witness: That is right.

Mr. Barshay: I am past that, Mr. Turkus.

Mr. Turkus: I did not know that. Neither did he.

Q. You said you stayed there 10 minutes? A. That is right.

Q. I am past that candy store. A. He got into the car—just a minute—

Q. All right. A. He got into the car with me again.

Q. And you went to another place? A. That is right.

Q. How long did that take? A. From there to Sackman Street and Livonia.

Q. How long? A. From there? About five minutes.

Q. Can you tell us as best you can what time you got to Sackman Street.

5914

Paul Berger—For People—Cross

Mr. Turkus: I object to this. The witness has indicated he kept no watch or clock of the movements, and he has explained that he could not even fix the first time.

5915

Mr. Cuff: If your Honor pleases, I object to Mr. Turkus putting the words into the witness's mouth. If he has an objection he ought to state it in a legal form and not make a statement that will guide the witness later on. I object to the statement.

Mr. Turkus: That is very unfair of Mr. Cuff.

Mr. Cuff: And you have been doing that right a'long.

Mr. Turkus: If he cannot predicate the first time, anything else is speculation.

By the Court:

5916

Q. Did you have a watch with you? Do you remember? A. I did.

Q. Do you remember whether or not you looked at it? A. I did not. Had no special reason.

Q. Did you look at any watch or clock? A. No, sir; I had no special reason to look at a watch.

Q. Have you any means of determining so as to give us fairly reliable information as to what time you got to the store on Sackman and Livonia?

Mr. Barshay: May we have an objection, your Honor, to line of inquiry?

Paul Berger—For People—Cross

5917

The Court: I withdraw it. I was trying to help you out. Go ahead.

The Witness: To the best of my recollection—

The Court: Recollection or judgment?

The Witness: —it would be about 9:30.

By Mr. Barshay:

Q. Then you left Rosen's candy store. After you did what you told the jury you did, you left Rosen's candy store?

5918

Mr. Turkus: I object to it. The witness is shaking his head in the negative.

Q. Without shaking your head, Mr. Berger—

Mr. Turkus: I object to it because he said that that is not the fact.

The Court: I thought the questioning already had the witness there.

Mr. Turkus: No, the questioning has got him on Sackman and Livonia. There is something else happened here.

5919

Q. You said you were there five minutes and you went to Rosen's candy store, did you not,—at Sackman and Livonia, and then you went to Rosen's candy store? A. From Sackman and Livonia.

Q. That is what I said. A. You did not. You asked me when I left Rosen's candy store.

Q. It only took five minutes to get to Rosen's candy store? A. That is right. And then you asked me if I left.

5920

Paul Berger—For People—Cross

Q. That is what I say now. A. That is different.

Q. Did you leave Rosen's candy store? A. After I pointed him out to Mendy.

Q. Did you leave Rosen's candy store? A. After I pointed him out to Mendy.

Q. If you want to say it again, you can, but did you finally leave Rosen's candy store? A. I say after I pointed him out.

5921

Q. What is the closest you got to Rosen's candy store? A. Across the street.

Q. Directly opposite? A. That is right.

Q. It is a 30-foot gutter, if you know? A. What is that?

Q. The gutter is 30 feet wide? A. I don't know how wide any gutter is. I did not measure it.

Q. And the best time you can give us is 9:30? A. Between 9:30 and 10. I left that place 9:30, to the best of my recollection.

Q. After you did whatever you said you did at Rosen's candy store, where did you go? A. Down to the East Side again with Mendy.

5922

Q. How much time did you spend in Brownsville near the vicinity of Sackman and Livonia, Saratoga and Livonia, and Rosen's candy store, all together?

Mr. Turkus: I object to it as already answered to the best of his recollection.

The Court: His testimony shows it is all guesswork.

Mr. Barshay: He has fixed himself the time as between 9:30 and 10.

The Court: Pardon me, he has not fixed the time. The Court won't discuss that.

Paul Berger—For People—Cross

5923

Q. Mr. Witness, did you say between 9:30 and 10?

The Court: I know what he said, but the Court knows it means nothing.

Mr. Barshay: I take an exception to the Court's remarks.

The Court: Now proceed.

Mr. Barshay: And I ask for the withdrawal of a juror and the declaration of a mistrial.

5924

The Court: On what ground?

Mr. Barshay: On the ground of prejudice, when the Court said that does not mean anything.

The Court: You mean to have a withdrawal of a juror because the Court will not agree with you that guessing as to time is accurate?

Mr. Barshay: No, sir, that is not my point.

The Court: I think it is. Denied.

Mr. Barshay: Exception, sir.

5925

Q. Did you ride back with Mendy Weiss to New York? A. I did.

Q. Where did you leave Mendy Weiss? A. On the East Side.

Q. Can you tell us now, your best recollection of what time you got back to the East Side? A. I cannot say definite.

Q. Can you tell us how long it took you to get back? A. Whatever time it took us to get back from there.

Q. About how long, please? A. You can figure about three-quarters of an hour.

Q. Where did you live then? A. I lived in East 54th Street, Brooklyn.

Q. Weiss left you off where? A. On the East Side.

Q. Where did you go from there? A. I took my car. I had my car there.

Q. Where did you have your car? A. On the East Side.

5927 Q. What kind of a car? A. My own car.

Q. What make? A. I had, at that time I had a Chrysler.

Q. When did you leave it on the East Side, that night or that day? A. I come in with it in the morning. I used to park it on 12th Street and Broadway in a lot.

Q. Where did you park it that day? A. 12th Street and Broadway, in the morning.

Q. Is that what you call the East Side? A. What would you call it, the West Side?

5928 Q. I won't call it anything. Is that what you call the East Side? A. To my recollection, yes, sir; to my knowledge, unless I am wrong.

Q. Where did Mendy take you from East New York and Rosen's candy store? Where did he leave you off? A. On the East Side.

Q. Exactly where? A. On Broome and Clinton.

Q. And where did you go from there? A. I took a cab and I went up to 12th Street and Broadway. 12th Street off Broadway there was a lot, parking lot.

Q. Did you ask Mendy to drive you to where your car was? A. I did.

Q. He refused? A. He had to see somebody.

Q. You testified here that about two weeks after the killing of Rosen, Buchalter had a talk with you; did you not? A. That is right.

Q. Where was this talk? A. Up in his office.

Q. Where? A. 200 Fifth Avenue.

Q. In the office? A. Not in the office.

Q. Where? A. In the hall. I never spoke in the office. We always used to walk out in the hall; walk up one flight or walk downstairs one flight—talked like that on the stairs.

5930

Q. He told you the police were looking for Rubin? A. That is right.

Q. He told you that the District Attorney's office was looking for Rubin? A. I don't remember that definite.

Q. But definitely you do remember that the police were looking for him? A. I don't know if they were at the time; probably were, but I can't say that definitely.

Q. A few minutes ago or a few seconds ago you told this jury that he told you in that hallway, that Buchalter told you in that hallway, that the police were looking for Rubin. A. That is right.

5931

Q. No doubt about that? A. He will have to go away.

Q. Had you seen Rubin in the meantime in those two weeks? A. I did.

Q. Talked to him? A. I did.

Q. He told you that the Brooklyn D.A.'s office and police were looking for him too, didn't he?

Mr. Turkus: Objected to.

The Court: Overruled.

A. He did.

5932

Paul Berger—For People—Cross

Q. How many times did he tell you that? A. Once.

Q. Then you were told to make arrangements to have Rubin go with Danny Fields? A. That is right, until things straightened out in Brooklyn.—

Q. Danny Fields had already been told to go away on account of the Dewey investigation, is that right? A. The time, yes.

5933

Q. Speak up, please. A. That is right, Lepke told him to go away.

Q. And when you were told by Buchalter that Rubin had to go away with Danny Fields until things cleared out in Brooklyn—is that what you said? A. Yes.

Q. You remember that phrase distinctly? A. That is right.

Q. And in that conversation he told you again, did he not, that the District Attorney's office and the Police Department were looking for Rubin?

5934

Mr. Turkus: I object to it. That is not the testimony.

The Court: Let him state.

Mr. Barshay: If your Honor pleases—

The Court: Objection overruled.

Q. Will you answer that? A. What is that again?

(Pending question read.)

A. No, he did not.

Q. Please, will you not look in this direction?

A. What is that? What was that?

Q. If you don't mind, Mr. Berger, in this direction. A. What was that? That is where I am looking.

Q. Face the jury. A. That is where I am looking. Just wanted to see—

Q. Did Rubin tell you that when he made the arrangements to go away? A. Did Rubin tell me what?

Q. That he was going away as per instructions because the Police Department and the District Attorney's office were looking for him? A. No, sir, Lepke.

5936

Q. Lepke told you that? A. Lepke told me that he should go away until things straighten out in Brooklyn, and he suggested that he should go with Danny Fields, and I said it would be all right, and have Danny Fields cheer him up, and to be away until things start clearing up in Brooklyn.

Q. Did Lepke tell you that the police were looking for Rubin before you made those arrangements?

Mr. Turkus: I object to it. It is repetitions. It has already been answered.

5937

The Court: That is what he said. Did he specifically say the police were looking, or did he simply say what you have just testified to, that it was advisable for Rubin to go away with Danny Fields?

Mr. Barshay: May I object to the form of the question, your Honor?

The Court: On what ground?

Mr. Barshay: This witness is a clever witness, Judge. I am allowed on cross-

5938

Paul Berger—For People—Cross

examination a little wider latitude than on direct.

The Court: Now you are starting to scold the Court.

Mr. Barshay: I am not scolding the Court.

The Court: Yes, you are. Objection overruled. Listen to the question.

(Pending question by the Court read.)

The Court: Which was it?

5939

The Witness: That it was advisable for Rubin to go away with Danny Fields until things cleared up in Brooklyn.

The Court: But did he say specifically that the police were looking for Rubin?

The Witness: No.

Q. You mean at that point he did not say that?

The Court: At any time.

The Witness: Not at that time.

5940

Q. At what time did he say that? A. A few days before.

Q. A few days before? Where? A. Up in his office. I say "office"; I do not mean we spoke in the office.

Q. And when after that did he tell you that again? A. That was the time when he suggested that it would be a good idea for him to go up with Danny Fields. That is the time he only said that he should go away with Danny Fields until things cleared up in Brooklyn and have Danny Fields cheer him up, pep him up.

Q. When else, Berger, did Lepke, or Buchalter,

tell you? At any other time or place did Buchalter tell you that the police were looking for Rubin or that the District Attorney's office were looking for Rubin?

Mr. Turkus: I object to it. He has already answered it.

Mr. Barshay: I object to it. If your Honor pleases, I have now gone beyond the time with respect to the arrangements being made between Rubin and Danny Fields. I am going beyond that now. Any conversation with Buchalter is admissible, your Honor has ruled, and it is admissible. Might this witness be allowed to answer those questions?

5942

The Court: He has answered the question, but obviously there was some confusion as to what your question called for. Apparently he did not pay attention to it closely. You may go ahead with that.

Q. Berger, when at any other time did Buchalter tell you, in all your dealings with respect to your making arrangements with Rubin for his going out of town and giving him his money, that the police or the Brooklyn D.A.'s office was looking for him? A. He told me they were looking for him.

5943

Q. Yes. A. He did not tell me who.

The Court: Did he say "police"?

The Witness: No, I won't say that definitely.

The Court: Did he say "District Attorney", if you recall?

5944

Paul Berger—For People—Cross

The Witness: I can't recall it definitely, but I know he told me they were looking for him.

Q. Yes. Did he say, with respect to who was looking for him, the word "Brooklyn"? A. Meaning on account of the murder of Rosen.

Q. That is clear, isn't it? A. In my mind it was.

Q. You understood it that way? A. Right.

5945

Q. How many times did he tell you they were looking for him, without mentioning who, because of the murder of Rosen in Brooklyn? A. That was just the time.

Q. Any other time, Berger? A. No, not that I can recollect.

Q. When he came back from Salt Lake City, was there any such talk by Lepke and you? Was there? A. Of what?

Q. That the police or the District Attorney's office or someone, no matter who it is, was looking for Rubin with respect to the Rosen case?

5946

A. Well, this I can't say definitely, but I do know that he was told to go away until things cleared up in Brooklyn.

Q. You have said that about three or four times. Now I am asking you something else, Berger. Rubin came back from trips here and there, didn't he? A. That is right.

Q. You used to see him when he came back? A. That is right.

Q. Did you speak to Rubin? A. I did.

Q. He complained did not want to stay away, didn't he? A. That is right.

Q. Always? A. That is right.

Q. Buchalter always urged him to go away.

through you or personally, right? A. Personally. Not through me. I had no say there.

Q. In those talks, when you and Rubin spoke, when he came back from Salt Lake City, New Orleans, and here and there, he told you that he was tired, he did not want to stay away, and did he tell you also that he was away because the police or the D. A.'s office were looking for him with respect to the Rosen case?

Mr. Turkus: Objected to. There is a double question there.

5948

Mr. Barshay: I will ask it one at a time. You are right.

Q. Did he tell you when he came back from those trips that someone was looking for him on account of the Rosen case? A. Who tell me?

Q. Rubin.

Mr. Turkus: Speak up.

A. He did not.

Q. Did you ever speak to Rubin about his fleeing from the Rosen case? A. In regards to what?

5949

Q. In regards to running away from the Rosen case.

Mr. Turkus: I object to it.

A. He was following instructions. I don't know what you mean, Counsellor.

Q. Well, did Rubin tell you that they were looking for him? A. Lepke told me they were looking.

5950

Paul Berger—For People—Cross

Q. We will get to that, Berger. Did Rubin tell you—

Mr. Turkus: Objected to.

Q. —that they were looking for him because of the Rosen case?

Mr. Turkus: Object to it. That has been answered.

5951

The Court: This calls for yes or no.

Mr. Turkus: He has answered it.

The Court: Did Rubin ever say they were looking for him because of the Rosen case, specifically using the name Rosen?

The Witness: He did.

Q. Now tell me how many times he told you that. A. That was the time when Danny Fields, when I spoke to Danny Fields.

5952

Q. Any other time, Berger? A. Danny Fields told me at the time I spoke with him over the wire that Rubin called him up, wanted to see him at two in the morning, and when he went over there Rubin was raving. The reason for that was he had seen in the papers they were looking for him in regards to the Rosen murder. That is the only time.

Q. In other words, you were told that Rubin's name was mentioned in the paper? A. That is right.

Q. With respect to the Rosen case. Was that the New York *Post*, if you recall? A. I did not see it in the papers.

Q. There is no doubt you were told that is the

name appeared in the newspaper? A. That is the conversation I had.

Q. At any other time—forget this one for the second—at any other time from the beginning to the time that Rubin finally came back and surrendered himself, did Rubin tell you that they were looking for him in the Rosen case? A. No.

Q. Did Lepke tell you? A. No.

Q. What? A. You mean at what time?

Q. At any time other than the time you just told us. A. No.

5954

Q. Did you ever speak to Rubin about the Rosen case in those conversations you had? A. No, sir.

Q. Did you collect any money from Local 138 or from Wollie Goldis for Rubin? A. I refuse to answer that question on the ground that it may incriminate me, on the advice of counsel.

Q. Maybe you do not understand me, Berger. I am speaking only of the \$25 amounts. Did you collect any moneys? A. I refuse to answer that question on the ground it may incriminate me and on the advice of my counsel.

Q. Before Rubin left for Saratoga, did Rubin take you around to customers? Did he? A. What do you mean, "customers"?

5955

Q. Did he take you around to people, to any people, and introduce you? A. What is the purpose of introducing me?

Q. I do not know. Did he do such a thing? Did he take you and introduce you to people whom you had never met before, before Rubin left for Saratoga?

Mr. Turkus: The witness has raised his Constitutional point on that.

5956

Paul Berger—For People—Cross

Mr. Barshay: If your Honor please, he never raised it with respect to this question and, Mr. Turkus, I think you ought to be fair enough not to make an objection in that form.

The Court: Yes.

5957

Q. Did Rubin take you around and introduce you, before you had made arrangements for him to go to Saratoga, to introduce you to some people whom you had never met before? A. I can't answer that question. That question is going to incriminate me on account of my case in New York.

The Court: No more suggesting on the question of Constitutional rights. The witness is well able to take care of himself, having been advised by his own lawyer.

5958

Q. Did you get any money from any of those people to whom Rubin introduced you? A. I refuse to answer that question on the ground that it may incriminate me.

Q. Can you tell us how many people he introduced you to? A. I refuse to answer that question on the same ground.

The Court: May I see those indictments?

(Assistant District Attorney Hurwitz, of Mr. Dewey's office, handed papers to the Court.)

Mr. Barshay: May I proceed in the meantime?

The Court: Yes.

Mr. Barshay: Because I want to pursue exactly the subject you are going to look at.

The Court: Briefly they cover alleged extortion and coercion from the period beginning about 1929 up to and including the specific date in 1937.

Mr. Barshay: May I go into each one, your Honor?

The Court: No, I looked at them only to see whether there was any indication that the refusal to answer was not in good faith and for the constitutional reasons stated. You go ahead.

5960

Mr. Barshay: Perhaps I do not understand the Court's ruling. Are you going to allow me to ask each and every question?

The Court: The Court should not be required to explain a point of law. I did this for your benefit. The explanation is that if it was apparent from the indictments that the refusal to answer was not in good faith and obviously not for the purpose of protecting the constitutional rights of the witness, then the Court would have a right, in another way, to deal with the witness for contumacious refusal to testify; but after reading the indictments the Court is satisfied that it cannot deal with the witness in that way.

5961

Mr. Barshay: All right. May I ask your Honor specifically to direct this witness to answer?

The Court: I cannot.

5962

Paul Berger—For People—Cross

Mr. Barshay: May I take an exception?

The Court: He is within his constitutional rights.

Mr. Barshay: May I take an exception?

The Court: Certainly.

Mr. Barshay: May I have the same request with respect to a direction and an exception in every question and answer I am now going to put to this man?

The Court: I don't know what they are.

5963

Q. Berger, between August, 1933, and August, 1937, did you participate and share in the extortion of moneys to the amount of \$4800 from the Acme Textile Shrinkage Works, Incorporated, and David Greenberg, in the County of New York? A. I refuse to answer that question on the same ground, that it may incriminate me.

Mr. Barshay: I ask your Honor to direct him to answer.

The Court: Denied.

5964

Mr. Barshay: Exception.

Q. Did you participate and share in the extortion of moneys to the amount of \$4800 between August, 1933, and August, 1937, from the Atlas Cloth Spenging Corporation and Isidore Feingold, in the County of New York? A. (No answer).

Q. May I have an answer to the question? A. I refuse to answer that question. It may incriminate me.

Mr. Barshay: Instead, your Honor, of my asking for a specific direction on each

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5965

question, may I have one objection to your failure to do so and one exception?

The Court: Yes.

Q. Did you participate—

The Court: I take it you are reading from the indictments?

Mr. Barshay: I have been so informed, your Honor.

The Court: I think that should be on the record, that these questions are asked from the reading of the indictments by counsel.

5966

Mr. Barshay: They have been given me with that understanding.

The Court: Yes, all right. That should protect you sufficiently in your rights.

Q. Did you participate in the month of October, 1934, in extorting the sum of \$1500 from the Adeline Dress Manufacturing Company, Incorporated, and Herman Goodman? A. I don't even know what it is.

5967

Q. Is that your answer or do you refuse to answer? Which is it? A. Refuse to answer on the same ground. Judge, is it all right?

The Court: The Court cannot advise you. You have been advised by the Court previously and been advised by your counsel.

The Witness: I had nothing to do with it anyway. As long as the counsel advised me that, all right.

5968

Paul Berger—For People—Cross

Q. I want to get these questions to you, Berger. Did you participate in extorting the sum of \$20,000 from May, 1934, to July, 1935, from the B. & R. Clothing Company, Incorporated, and Irving O. Rudow and Albert Turner?

A. I will answer the question. I never extorted a nickel. That was all extorting, you ask me?

Q. Are you now waiving your rights to object and refuse to answer, Mr. Berger?

5969

Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Do you want me to go back to the first case?

Mr. Turkus: I object to that.

The Court: Sustained.

Mr. Barshay: Exception.

5970

Q. Did you participate in the extortion of \$9,000 between July, 1933, and October, 1935, from Blacker Brothers, Incorporated, and Morris Blacker? A. I will give you the answer that will settle the whole thing. I never extorted five pennies. I worked for my money. Besides I got paid from the Union. That settles the whole thing. I never got two pennies from any one of them, only followed instructions. I carried the damn money after they went away, nothing to do with any extortions. Never extorted a nickel from anybody.

The Court: These indictments, I think

should be on the record, are against quite a large number of defendants collectively. They are not against just this defendant but all who are claimed by the Grand Jury to have participated.

Mr. Barshay: I take an exception to that.

The Court: Do you deny it?

Mr. Barshay: No, that is why I am using the words "Did you participate?" That means with others. It is quite obvious.

5972

The Court: You don't deny what the Court says is true?

Mr. Barshay: Of course what the Court says is true. That is why I am using the words "participate in".

The Court: The names of those defendants would be put on the record, if you wished, but I am just informed by Mr. Dewey's representative that some of the defendants are still fugitives and it is not wise to let anybody know who they are.

5973

Mr. Barshay: I did not ask to put them on. I am only asking of this witness whether he is a defendant in that case.

The Court: You see you are asking him if he participated. That may be confusing to him and it may be confusing to the jury. It may mean, did you go out and take the money and carry it, whereas legal participation may require no such thing. The actual carrying and collecting

5974

Paul Berger—For People—Cross

may have been by other members of a group. You can go ahead with that understanding.

Mr. Barshay: I will take the answer from this witness to tell what he did in each and every case. They claimed privilege so I was stopped from doing so.

The Court: Go ahead. He has not waived his privilege.

5975

Mr. Barshay: He claimed it, I said, not waived it.

Q. Berger, you knew what that money was, did you not, that you got from these people?

Mr. Turkus: Wait a minute. I object to the form of the question. That is a confusing question.

A. I did not, absolutely not, what the agreement was made with.

5976

The Court: Did you collect any of the money yourself?

A. I was told to pick it up by Lepke. That's all I know.

Q. Did you pick it up? A. Yes.

Q. Did you go to the people whose names I read and pick it up personally? A. Went to some, not to some of them that you read.

Q. Can you tell me whether or not you did so personally with respect to Acme Textile Shrinkage? A. I don't know who Textile is.

Q. David Greenberg. A. Who?

Q. David Greenberg. A. I don't know who David Greenberg is.

Q. Atlas Cloth Sparging Company, Isidore Feingold. A. I refuse to answer these kinds of questions. I am indicted on them. I gave you a couple of things.

Q. Berger, either you answer them or you don't, depending upon yourself. Which do you want to do? A. I just gave you an outline of it but I refuse to answer these questions that it may incriminate me. I am indicted on a case in New York.

5978

Q. All right, Berger, tell me one way of the other. A. I refuse to answer.

Q. You refuse to answer?

Mr. Barshay: Now may I ask the Court to direct the witness to answer?

The Court: Denied.

Mr. Barshay: Exception.

Q. Answer the questions, please, as I put them to you.

5979

The Court: The Court will rule this way now because the man has asserted his constitutional rights. First the Court will ask this of the witness: Does your assertion of constitutional privilege refer to each and every allegation in those indictments? Is that your claim?

The Witness: I don't understand that.

The Court: Counsel is now reading paragraph after paragraph from the indictment. When you say you refuse to answer upon the ground it may tend to

5980

2

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inriminate you, is that refusal to answer intended to apply to all of the allegations against you in those indictments?

The Witness: Not all against me. Maybe some of them.

The Court: Your refusal to answer applies to the entire indictment?

The Witness: That is right.

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The Court: The Court rules counsel may not ask any further questions concerning the guilt or innocence of this defendant upon any of the matter alleged in the Dewey indictments.

Mr. Barshay: I take an exception to that and then may we mark—can we get into the record, your Honor, the names and addresses and the dates and the amounts of each and every person mentioned as the victim in those indictments?

The Court: No.

5982

Mr. Barshay: I take an exception. May I mark this piece of paper, which is not a full copy of the indictment but which contains the name and addresses, the dates and the amounts, for identification?

Mr. Turkus: I object. I ask that the indictments be marked for identification so that upon any review it may be properly before the Court.

The Court: You don't have to mark an indictment for identification.

Mr. Turkus: May we have the indictments considered marked for identification?

The Court: The Court assumes no responsibility for the contents of counsel's memorandum and therefore refuses to let this be marked for identification.

Mr. Barshay: May I have the original indictments or copies—

The Court: You may not because, as I told you, it is silent as to some defendants. That would disclose to you the names of people whom the police are seeking and who are alleged to be fugitives.

5984

Mr. Barshay: Your Honor, may I urge upon you this fact, that the office of District Attorney Dewey allows you to make a copy of the indictment but leaves out the names of the fugitives.

The Court: I know nothing about it.

Mr. Barshay: That is how I got them, sir.

The Court: I know nothing about it. That is Mr. Dewey's business. These allegations in those indictments are worthless as evidence against the witness. The jury is so instructed. That is a mere charge on which this witness is awaiting trial.

5985

Mr. Barshay: I take an exception.

The Court: In the absence of any admission by this witness as to the truth or not of those allegations, the asking of these questions is worthless. This witness has a constitutional right to refuse to answer any and all questions concerning his guilt or innocence upon those charges.

Mr. Barshay: I take an exception.

5986

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The Court: So disregard it. That is the reason the Court will not permit the reading of the indictments.

Mr. Talley: May I be heard on that?

Mr. Barshay: I take an exception.

The Court: A question of law, Judge.

Mr. Barshay: I make an offer of proof, your Honor.

The Court: No, you won't read them that way.

5987

Mr. Barshay: I do not want to read them. I am making an offer of proof.

The Court: Refused.

Mr. Barshay: To prove each and every allegation in the indictment against this witness on the theory that when a man offers himself to cross-examination, counsel is entitled to inquire into every act of his life which involves moral turpitude.

The Court: The Court has ruled. You have your exception. Let it go at that.

Mr. Barshay: I take an exception.

5988

The Court: You wanted to say something, Judge Talley?

Mr. Talley: May I be heard, sir?

The Court: Yes, sir.

Mr. Talley: I want to submit to your Honor, as a matter about which I did not think there would be any question or dispute, that this witness, having been offered by the District Attorney, counsel for any defendant is entitled as a matter of right to inquire into any discreditable, criminal, dishonorable act ever committed by this witness. He has been offered, he has been vouched for, his veracity has been attested

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5989

by his being called as a witness for the prosecution in this case. I respectfully submit that you cannot close the door; you have no power to close the door to a searching examination into every alleged discreditable or criminal act on the part of this witness, and I respectfully submit, sir, that we have a right to call his attention to every case of extortion upon which he has been indicted or which has been called to our attention and that he must be required to give some answer to those questions. If he chooses to say that he refuses to answer on the ground it will incriminate or tend to degrade him, then he may, under certain conditions, have the right to make that answer, but your Honor has no right to estop or foreclose counsel from calling his attention to a specific act upon which the inquiry is to be made.

5990

The Court: The Court is not trying to conceal anything.

Mr. Talley: Yes, you are.

5991

The Court: But you are trying to create the impression the Court is.

Mr. Talley: That is exactly my impression.

The Court: The Court is trying to prevent an hour or maybe two hours being wasted in a long lengthy trial where the witness has already said that his constitutional right, as alleged by him, applies to each and every part of ~~those~~ indictments, but as long as the good faith of the Court is challenged by you, the Court

5992

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will not be put in that light before this jury, will permit any and every question to be asked. Proceed. We will sit until we get through with it, even if we work late.

Mr. Talley: I think that is the proper way to proceed.

The Court: You will be howling for an adjournment about five or six o'clock.

Mr. Talley: No, I won't.

5993

The Court: Proceed.

By Mr. Barshay:

Q. Did you participate in the extortion of moneys to the amount of \$9,000 between July, 1933, and October, 1935, from Blacker Brothers, Incorporated, and Morris Blacker? A. I refuse to answer that question on the ground it may incriminate me.

5994

Mr. Barshay: Take an exception to the Court's refusal to direct this man to answer all along the line, your Honor, without saying so specifically. Is that all right, Judge?

The Court: That is all right.

Q. Did you participate in the extortion of moneys to the amount of \$3,000 between July, 1933, and October, 1935, from Blankson Clothes, Incorporated, and Irving Blank? A. I refuse to answer that question on the same ground.

Q. Did you participate in the extortion of \$12,500 from Blue Comet Dress, Incorporated, and Morris Joseph, between July, 1931, and July,

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5995

1936? A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$10,000 from March, 1935, to October, 1936, from City Hall Clothes, Incorporated, Louis Litt and Louis Chinitz? A. I refuse to answer.

Q. Did you participate in the extortion of \$50,000 from Donnie Frocks, Incorporated, and David Goldberg from January, 1934, to December, 1937? A. I refuse to answer that on the same ground.

5996

Q. Did you participate in the extortion of \$15,000 from Empire Bilt Clothing, Incorporated, Max Zerkow, and Samuel Cassidy from January, 1935, to December, 1936? A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$15,000 from January, 1933, to August, 1934, from the Fair Waist & Dress Company, Incorporated, and Abraham Gerwitz?

Mr. Turkus: I object to the form of the question.

5997

The Court: Overruled.

A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$3700 from March, 1935, to December, 1936, from Gladly Trusize Dress Corporation and William Schwartz? A. I refuse to answer that.

Q. Did you participate in the extortion of \$1500 in the month of March, 1935, from Joseph Goldman and Brother, Incorporated, and Joseph Goldman? A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of

5998

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\$10,000 from Goldsmith Brothers Manufacturing Company, Incorporated and Samuel R. Goldsmith between January, 1929, and December, 1935? A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$90,000 from the Greater New York Tailors Expressmen's Association, Incorporated, between May, 1928, and November, 1937? A. I refuse to answer that on the same ground.

5999

Q. Did you participate in the extortion of \$6500 from Halpern-Modell Company, Incorporated, and Samuel Halpern and Bernard Modell from July, 1934, to December, 1936? A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$7500 on July 1, 1934, from Hammondton Park Clothes Incorporated, William Kessler and Charles Goldberg? A. I refuse to answer that on the same ground.

6000

Q. Did you participate in the extortion of \$4800 from Hyle Textile Shrinking Company, Incorporated, Harry Buchalter and Anthony Sartori, from August, 1933, to August, 1937? A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$12,900 from the Interstate Shrinking Corporation and John Lippman, from August, 1933, to August, 1937? A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$7,000 from Jay Day Frocks, Incorporated, and Jack Davis, from March, 1932, to November, 1935? A. I refuse to answer that on the same ground.

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6001

Q. And did you participate in the extortion of \$13,000 from January, 1930, to December, 1936, from Jerry Dress Company, Incorporated, and Joseph Meyer? A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$27,000 from Kaplan & Elias, Mattie Kaplan and Samuel Elias, from February, 1933, to August, 1937? A. I refuse to answer. Three-quarters of them I don't know about.

Q. Did you participate in the extortion of \$4,000 from Varsity Dress Company, Incorporated, Samuel Edelman and Henry Meisler, from January, 1931, to October, 1935? A. I refuse to answer that on the same ground. Over ninety per cent of them firms I don't even know who they are.

6002

Mr. Barshay: I move to strike out the answer, your Honor, not responsive.

The Court: Let it stand.

Mr. Barshay: Exception.

6003

Q. Did you participate in the extortion of \$35,000 from Welco Dress Company, Incorporated, and Samuel J. Weiss, from January, 1934, to December, 1937? A. I refuse to answer on the same ground.

Q. Did you participate in the extortion of \$30,000 from Lustberg & Lipschitz, Max Lustberg and Jacob Lipschitz, from March, 1933, to April, 1937? A. Refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$25,000 from Lombardy Frocks, Incorporated, and Max Blauner, from August, 1931, to August,

6004

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1936? A. Refuse to answer to that on the same ground. These firms I don't even know what you are talking about.

The Court: Be patient and listen.

The Witness: Never heard of them firms in my life, ninety per cent of them or ninety-five per cent. You are asking me and I am answering.

6005

The Court: Strike that out. Either answer or assert your constitutional rights.

Q. Did you participate in the extortion of \$9600 from L. & L. Expert Shrinking Corporation and Morris Zydney, from August, 1933, to August, 1937? A. I refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$5,000 from January, 1934, to December, 1936, from Monogram Costume Company, Incorporated, and William Slonin? A. Refuse to answer that on the same ground.

6006

Q. Did you participate in the extortion of \$4200 from the Monarch Textile Shrinking Corporation and David Glick, from August, 1933, to August, 1937? A. Refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$4200 from Accurate Sponging Works, Incorporated, and Martin Dribben, from August, 1933, to August, 1937? A. Refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$9600 from Perfect Chatham Corporation and Morris Horowitz, from August, 1933, to Au-

gust, 1937? A. Refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$6,000 from Shil-Or Textile Shrinking Corporation and Philip Orlofsky, from August, 1933, to August, 1937? A. Refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$6,000 from Sachs Clothes, Incorporated, and Rudy Sachs, from March, 1935, to October, 1936? A. I refuse to answer that on the same ground.

6008

Q. Did you participate in the extortion of \$2,000 from Frank Starr-Friedlander, Incorporated, and Frank Starr and Samuel Friedlander, from January, 1934, to August, 1936? A. Refuse to answer that on the same ground.

Q. Did you participate in the extortion of \$30,000 from Samuel Saffer, Incorporated, and Oscar Saffer, from January, 1932, to October, 1935? A. Refuse to answer that on the same ground.

Q. And did you participate in the extortion of \$4800 from the Union Cloth Sponging Works, Incorporated, and Ralph Kibel, from August, 1933, to August, 1937? A. Refuse to answer that on the same ground. A whole lot more names in the telephone book.

6009

Mr. Barshay: I move to strike out the answer, sir, not responsive.

The Court: Strike it out.

Mr. Barshay: I ask again, your Honor, for the record, to direct this witness to answer those questions.

The Court: Denied.

6010

Paul Berger—For People—Cross

Mr. Barshay: Exception. May I ask your Honor to direct this witness to answer the question heretofore put by me to him with respect to the alleged inducement of the commission of perjury on November 1, 1938, of one Max Rubin.

The Court: I don't recall that.

Mr. Barshay: I asked that question of him, your Honor, and he claimed privilege.

The Court: Denied.

6011

Mr. Barshay: Exception, sir.

Q. Now, Berger, are you sure that the conversation between Buchalter and you and Rubin with respect to Rubin's going to Salt Lake City took place at the Hatfield Hotel? A. That is right, sir.

Q. No doubt about it? A. No.

Q. That is where the arrangements were made, at the Hatfield Hotel, with respect to Max Rubin leaving for Salt Lake City? A. That is right.

6012

Q. How many conversations did you have with the defendant Buchalter and Rubin at the same time at the Hatfield Hotel?

Mr. Turkus: I object unless the time be fixed. The Hatfield figured in the testimony—

Mr. Barshay: In his testimony.

Mr. Turkus: On other occasions too. I object unless the time be fixed.

The Court: Try to fix the time.

Mr. Barshay: I will get back to it, Judge.

The Court: You mean in relation to the Salt Lake City incident?

Mr. Barshay: No, sir.

The Court: Other occasions too?

Mr. Barshay: He testified to two occasions where he saw Rubin at the Hatfield Hotel. I will try to get the date exact.

The Court: Yes.

Q. There is no doubt that the money that you were getting for Max Rubin to give to him, you got from Murray Weinstein, is that so? A. Moneys or money.

6014

Q. Moneys or money to give to Rubin you always got from Murray Weinstein? A. Only \$50.

Q. Only once? A. The time that he was away, every week.

Q. Yes, but you got it from Murray Weinstein? A. Either Murray Weinstein or Sam Katz.

Q. Never from the defendant Buchalter? A. No.

Q. Can you tell me the date that you first saw Rubin at the Hatfield Hotel, pursuant to the telephone call that you got? A. I can't remember that definitely.

6015

Q. Was it immediately after he came back from Saratoga in October of 1936? A. That is right.

Q. What part of October, do you know? A. I cannot say that definitely.

Q. He was away one week, was he not? A. About a week or so.

Q. Where did you get the telephone call from

6016

Paul Berger—For People—Cross

Rubin? Where were you? A. I was in my place of business.

Q. Which place of business? A. 714 Broadway.

Q. Name of the concern? A. Goldcraft Clothing Company.

Q. Did you tell Rubin where you had your place of business before he left? A. He knew it.

Q. Had he ever called you there before? A. He did.

6017

Q. He and you had personal business that had nothing to do with Buchalter, isn't that so?

Mr. Turkus: I object unless the time be fixed.

Q. At any time.

Mr. Turkus: I object to it, incompetent, irrelevant and immaterial, at any time.

The Court: Overruled.

6018

Q. Do you understand me, Berger? A. No, I do not.

Q. You and Rubin had matters of personal interest between you and Rubin alone that had nothing to do with Buchalter; isn't that so? A. No.

Q. Never? A. We did not have any personal business. Any business we had was through Lepke.

Q. Did you ever have any other business other than for Lepke, you and Rubin, any union business? A. Not that I know of. Only business I

had with Max Rubin was through the instructions of Lepke.

Q. About that there is no doubt? A. That is all.

Q. On October 31, 1938, Buchalter had already been away; isn't that so? A. That is right.

Q. You had not been communicating with Buchalter while he was away? A. No.

Q. You did not know where he was? A. No.

Q. He never got in touch with you? A. No.

Q. Did you see Max Rubin then at twelve o'clock noon at Fifth Avenue and 17th Street?

6020

Mr. Turkus: That is objected to as repetitious. This morning we had that incident.

Mr. Barshay: I barely touched upon that.

Mr. Turkus: I know, but you brought out something about another defendant and he objected, his counsel did. I object to it. It has been answered.

The Court: Sustained.

Mr. Barshay: Exception.

6021

Q. On that day did you have personal business with him?

Mr. Turkus: Objected to as already answered, what the business was and who instructed him.

The Court: Sustained.

Mr. Barshay: Exception.

Q. At that time was Max Rubin in custody of police? A. He was.

6022

Paul Berger—For People—Cress

Q. You mean he was under guard? A. At that time?

Q. Yes. A. He was under guard since he got shot.

Mr. Barshay: I move to strike out the answer, your Honor.

The Court: Strike it out. The jury disregard it.

6023

Q. Did he speak to you in the absence of these police; yes or no? A. I refuse to answer that on the ground that it may incriminate me in New York.

Q. Did he offer to put you then on the payroll of the New York Tailoring, Greater New York Tailoring Expressmen's Association? Did he? A. I refuse to answer that question, that it may not incriminate me.

Q. Did he give you \$400 to be split between you and Danny Fields? A. I refuse to answer that one that it may incriminate me.

6024

Q. Did he offer you a job on the payroll of this association at the rate of \$56 a week?

Mr. Turkus: I object. That is not competent, material or relevant, does not affect his credibility.

The Court: Sustained.

Mr. Barshay: Exception. May I call your Honor's attention, if you please, that this man said he had no personal business with Rubin and on that point I am now trying to impeach him, that he did have personal business with Rubin after the defendant Buchalter had been away from

Paul Berger—For People—Cross

6025

the jurisdiction of New York and he did not communicate with him nor had he heard from him.

The Witness: At the direction of Mendy Weiss.

Mr. Barshay: I move to strike out the answer.

The Witness: The same as Lepke.

The Court: Strike out the answer as irresponsible.

Mr. Barshay: On that theory will your Honor permit me to go ahead?

6026

The Court: No.

Mr. Barshay: I take an exception.

Q. On November 2, 1938, at Fifth Avenue and 17th Street, did you meet Rubin again? A. I don't definitely remember that.

Q. Well, did he give you \$200 on that day?

Mr. Turkus: I object to ~~that~~ That does not affect his credibility. ~~He~~ He has made that statement this morning.

The Court: Overruled. You would remember \$200, wouldn't you? Did he give you \$200?

6027

The Witness: He did.

The Court: Do you remember when that was and where it was?

The Witness: He loaned me \$200.

Q. He loaned you \$200?

The Court: Counsel is trying to place time, the time this happened. Do you remember that?

6028

Paul Berger—For People—Cross

The Witness: I don't definitely remember, Judge.

The Court: Do you remember the place?

The Witness: Oh, that was up in the Expressmen's Association.

The Court: Whereabouts?

The Witness: 17th Street.

6029

Q. Did Rubin say to you at that time and at that place at Fifth Avenue and 17th Street, "Berger, you be with me just to let the members of the Union see me walk with you and speak with you"? A. He did not.

Q. How many weeks did you get \$50, if you got any at all, from this association?

Mr. Turkus: I object.

A. He loaned me \$200.

Mr. Turkus: I object to the form of the question.

6030

Mr. Barsbay: I will withdraw it, Mr. Turkus.

Q. You did get the \$200, you say? A. He loaned me \$200.

Q. You say it was a loan? A. That is just what it was.

Q. Did you give him a note for it? A. No.

Q. Did you ever pay it to him back? A. No.

Q. You still owe it to him, don't you? A. That is right. That time I told him I am in need of some money and it is the best thing to get a loan of \$200.

Q. You did not tell Rubin then that you fingered him, did you? A. I did not.

Q. Did Rubin tell you, after he gave you this \$200, that an Assistant District Attorney of Dewey's office told him, Rubin, not to put you on any payroll and Rubin then said to you, "Under these conditions I have to take you off"? Did he say that to you? A. No, sir; I don't remember that definitely at all.

Q. What? A. I don't remember definitely about me being put on any kind of a payroll there. The only thing I loaned \$200, the only thing I remember. Anything else what you tell me now, there is no truth in it.

Q. Did you give Danny Fields any money? A. I did not give him.

Q. Did Rubin give him any money? A. He loaned him \$200.

Q. He loaned Danny Fields how much? A. \$200.

Mr. Turkus: I object to this. That does not affect his credibility or have anything to do with the case under indictment that we are trying here.

The Court: Sustained.

Mr. Barshay: I except to it.

The Witness: I took the \$200 and I gave it to Mendy Weiss, if you want to know that.

Mr. Talley: I move to strike that out and ask the jury disregard it.

The Witness: I gave it to Mendy and Mendy took it too.

The Court: Strike it out.

6034

Paul Berger—For People—Cross

Mr. Barshay: Will your Honor admonish this witness?

The Court: Yes. Don't interrupt that way again. What were you saying, Mr. Barshay?

Mr. Barshay: Your Honor, I am only addressing this to this witness because he said he had no personal business with Rubin.

The Court: Go ahead.

6035

Mr. Barshay: On that score and that score alone.

The Court: Whether he did or not has no bearing on the question.

Mr. Barshay: I take an exception.

Q. Did he first give you a check for \$400 and did you say to him at that time, "Where can I cash this check?"

Mr. Turkus: I object.

6036

Q. And then did he take it back?

Mr. Turkus: I object to it. That is a triple question.

Mr. Barshay: Do you want me to do it three different ways?

Mr. Turkus: I do not want you to even be annoyed with it at all. I object. It does not have anything to do with the case.

Mr. Barshay: I assure you I am not annoyed, Mr. Turkus.

Mr. Turkus: Do it any way you want.

The Court: Sustained.

Q. Do you know whether or not your telephone was tapped at this Goldcraft Corporation? A. I didn't know.

Q. Dewey at that time had been in the process of questioning you through his assistants, isn't that so?

Mr. Turkus: I object to the question.

The Court: Overruled.

A. Will you repeat that question?

Q. Mr. Dewey at that time was in the process of questioning you?

Mr. Turkus: My objection was on the ground it is repetitious. That was answered this morning.

The Court: I think so.

Mr. Turkus: And again this afternoon.

Q. Rubin called you up and gave his right name?

Mr. Turkus: I object unless the time be fixed.

Mr. Barshay: The time that he speaks of, the only conversation over the telephone at his place of business from the Hatfield Hotel.

Q. Did he give you his right name? A. No.

Q. What name did he give on the telephone?

A. I naturally recognized his voice.

Q. Did you answer all the telephone calls?

A. If I was not there, some one else answered.

Q. What name did he leave? A. Did not leave

6040

Paul Berger—For People—Cross

any name, just a friend and the time he called back so I would be there and get a phone call.

Q. You know Rubin at that time was being looked for by the District Attorney's office of Manhattan, isn't that so?

Mr. Turkus: Objected to. It does not affect his credibility or go to the issue of this indictment.

The Court: Sustained.

6041

Mr. Barshay: Exception.

Q. Did Rubin tell you that?

Mr. Turkus: I object to it. It is incompetent, irrelevant and immaterial. It does not affect his credibility or go to the issue of the indictment.

The Court: Overruled.

Q. Did Rubin tell you that? A. Tell me what?

Q. That Dewey was looking for him? A. Never told me.

6042

Q. You did not know that?

Mr. Turkus: I object to the form of the question. That does not go to his credibility.

The Court: Sustained.

Mr. Barshay: Exception.

Mr. Turkus: Or the Rosen murder.

Mr. Barshay: Again I object, your Honor, to Mr. Turkus naming the Rosen murder in any objection he makes.

Mr. Turkus: Three times you have been overruled on that.

The Court: Overruled again.

Mr. Turkus: That is the fourth.

Q: You knew Rubin was engaged in participating in extortions in the flour industry, did you not?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Barshay: Exception.

Q: At the Hatfield Hotel, when you and Rubin separated, did you give him any money? A: I did.

Q: Did you get that money from Weinstein? A: I refuse to answer that question that it may incriminate me.

Mr. Barshay: That question I ask your Honor to direct him to answer.

The Court: Denied.

Mr. Barshay: Exception.

Q: Did Buchalter say anything about Brooklyn at that time? A: At what time?

Q: At the time that you gave Rubin money? A: I gave him money—

Q: At the Hatfield Hotel. A: I gave him money a number of times.

Q: At the Hatfield Hotel, the very first time he came back from Saratoga? A: What is the question?

Q: Did Lepke say anything to you with respect to Brooklyn at that conversation? A: That is right, while we were there.

Q: No doubt about it? A: That is right.

6046

Paul Berger—For People—Cross

Mr. Barshay: Page 1677, at the bottom, Mr. Turkus.

Q. Were you asked this question on your direct examination, referring to a talk at the Hatfield Hotel, the very first talk: "Q. When you told that to Lepke did Lepke say anything to you—that Rubin was in a hotel Hatfield I am talking about that conversation. A. He did.

6047

"Q. (At the top of page 1678) What did he say?" And did you make this answer on your direct examination: "A. He told me, 'I don't know what I am going to do with him. He has got to stay away until things clear up,' and Lep told me to give him his money;"

Did you answer the question exactly the way I read it? A. Cleared up in Brooklyn.

Mr. Barshay: I move to strike out the answer as not responsive.

Mr. Turkus: That is responsive to that question, did he answer it exactly that way.

6048

The Court: I cannot understand the answer.

(Answer read by the reporter.)

Mr. Barshay: I move to strike out the answer as not responsive. I asked him whether that question was asked of him and that answer was made and I read as Mr. Turkus followed me, correctly.

The Court: You mean you are reading from the record of this trial?

Mr. Turkus: If you read page 1676, at the top.

Mr. Barshay: I object to that. I asked a simple question for the purpose of impeaching him, after laying my foundation properly.

Mr. Turkus: I am going to object to it because it does not impeach his testimony. On page 1676 he said verbatim—

Mr. Barshay: I object to counsel doing any such thing and getting the witness out of a hole.

Mr. Turkus: I am not getting him out of a hole. 6050

Mr. Barshay: Which I have a right to do, your Honor, exactly as it is quoted.

Mr. Turkus: Page 1676, the top, the first question has it verbatim, the way he has answered now.

Mr. Barshay: What page did you say?

Mr. Turkus: 1676.

Mr. Barshay: Where is that?

Mr. Turkus: The page before what you read.

Mr. Barshay: First, your Honor, I think Mr. Turkus ought to know he will have a chance at redirect to read whatever he wants. I asked a proper question and I ask a ruling on it. Did he make that answer to that question as I read it? 6051

The Court: Is there any doubt about it?

Mr. Barshay: I want Mr. Turkus to say that.

The Court: It is in the record.

Mr. Barshay: Yes, but this witness

6052

Paul Berger—For People—Cross

now says he said "cleared up in Brooklyn," which is inconsistent.

Mr. Turkus: He did on 1676.

Mr. Barshay: You ought to be ashamed of yourself.

Mr. Turkus: You ought to be ashamed of yourself to try to confuse someone.

Mr. Barshay: I take an exception to that remark, your Honor.

6053

Mr. Turkus: Well, if he is going to bait the District Attorney, I won't make any objection to anything he says. Let him say what he pleases.

The Court: The Court has not been able to get in a word edgewise—

Mr. Turkus: I am sorry, your Honor.

The Court: —for some time back. The Court cannot understand why you have to ask a man whether he has been asked this and was his answer this, when it is on the record of this trial. All you have to do is read it. If there is any dispute about it—

6054

Mr. Barshay: The man now denies, apparently, your Honor, that he said that.

The Court: He has not denied anything.

Mr. Barshay: He added something which is not contained in the answer.

The Court: He gave something not directly responsive, but quite illuminating and also competent. Let it stand.

Mr. Barshay: Take an exception to it.

The Court: You won't get a technical ruling on that.

Mr. Barshay: May I urge upon the Court that the question of flight from Manhattan and the question of flight from Brooklyn is very vital in this case?

The Court: Please proceed.

Mr. Barshay: Take an exception.

Q. You called New Orleans on the telephone?

A. I did.

Q. From where? A. From a booth, telephone booth.

Q. What booth? A. I was in Brooklyn. Telephone booth.

Q. Where did you telephone New Orleans from? A. From a telephone booth.

Q. Address, please? A. I don't remember the address.

Q. The street? A. Somewhere on Broadway, Brooklyn.

Q. Broadway near where? A. On Gates Avenue.

Q. Do you know what kind of a store it was? A. Either a drug store or a cigar store.

Q. Do you know which? A. I cannot definitely say.

Q. Do you know what time you called? A. At night.

Q. Do you know what time at night? A. After nine o'clock. I know because the rates were down.

Q. How much money did you put in the coin box? A. I don't remember definitely, but I think it was a couple of dollars.

Q. Do you know how much? A. I don't remember definitely.

6056

6057

6058

Paul Berger—For People—Cross

Q. Did you have to put in any more money when the three minutes were up, if they were up? A. I don't remember that definitely.

Q. Did you ever telephone to New Orleans on any other occasion? A. No, sir.

Q. For Max Rubin? A. No, sir.

Q. That was the only time, wasn't it? A. That was.

Q. And you could not remember where you made that call from? A. I cannot.

6059

Q. Is it because you know I could trace that number— A. I am telling you the truth.

Q. —that you don't remember? A. If I knew I would tell you. There is nothing for me to hide. I called him. I did call him. I put my own money in there. What is there to hide? I did call him at New Orleans by Lepke's orders.

Mr. Barshay: I move to strike out the answer, your Honor.

Mr. Turkus: That was invited by the observation does he know he could trace the number. I ask that it stand.

6060

Mr. Barshay: Yes, you know that too.

Mr. Turkus: I don't know that.

The Court: All through? Strike out the latter part as irresponsive.

Q. When did you see Rubin again at the Hatfield Hotel? A. Repeat that question again.

Q. When did you see Rubin again at the Hatfield Hotel? A. After what?

Q. After the first time you described you saw him at the Hatfield Hotel. A. What is relating

to? I seen him a couple of times. I don't remember just what time you mean.

Q. You saw him the first time when he came from Saratoga, did you not? A. That is right.

Q. That is the time you described as the conversation about Salt Lake City taking place; is that right? A. That is right.

Q. When again did you see him at the Hatfield Hotel after that? Do you know? Do you know that? A. After he came back from Salt Lake City?

Q. Yes. After he came back from Salt Lake City you are definitely certain about seeing Rubin at the Hatfield Hotel? A. That is right.

Q. There is no doubt about it in your mind? A. That is right.

Q. Do you know the date? A. I do not.

Q. Do you know who was present? A. I was with him.

Q. Who else? A. I don't remember anybody else being there.

Q. Do you know where he called you? A. I think he called me from the hotel.

Q. Where? A. In my place.

Q. You did not expect that call, did you? A. Lepke told me he was back and he was going to get in touch with me.

Q. Buchalter told you before he came back from Salt Lake City that Berger is to get in touch with you? A. What? Who was to get in touch with me?

Q. Withdrawn. That Rubin was to get in touch with you.

Mr. Turkus: That is an incomplete question.

6064

Paul Berger—For People—Circus

The Witness: I presumed that he was back, when he told me he was back he was going to get in touch with me.

Q. What I want to know is, did Buchalter tell you he was back, meaning Rubin? A. That is right.

Q. He told you that he was back before— A. That is right.

6065

Q. —you saw Rubin at the hotel? A. That is right.

Q. Isn't it a fact, Berger, that when you got the call from Rubin at the Hatfield, you went and told Buchalter that Rubin was back? A. No, I did not keep in touch with him since he was in Salt Lake City. How did I know he was going to come back?

The Court: After he came back.

6066

Q. After he came back from Salt Lake City, he got in touch with you first, did he not, and you were the one that told Buchalter that he is back? A. No, sir.

Q. You say now that Buchalter told you he was back? A. He was back in town from Salt Lake City.

Q. (Page 1677) Were you asked these questions and did you make these answers?

Q. After that did you hear from Rubin? A. I did.

Q. How long after, if you can remember? A. To the best of my recollection, about two or three weeks after.

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6067

"Q. Did Rubin get in touch with you? A. He did.

"Q. In what way? A. By telephone.

"Q. Did he talk to you on the telephone? A. He did.

"Q. Did you tell Lepke of that? A. I did.

"Q. How long after you received the call? A. Same day.

"Q. What did you say to Lepke? A. I just got a call from Max Rubin; he is over in the hotel.

6068

"Q. Did you tell him the name of the hotel? A. That is right.

"Q. What hotel was it? A. Hotel Hatfield."

Mr. Turkus: I object to it. There is nothing inconsistent.

The Court: Overruled.

Q. Did you testify as I read? A. That is right.

Q. Do you remember that conversation in the automobile between Buchalter, yourself, and Rubin? A. At what time and what place are you talking about?

6069

Q. After you took Rubin from the Bronx to meet Buchalter in Manhattan. Do you remember that? A. That is right.

Q. Did you talk to Rubin on the way down from the Bronx, on your way down to meet Buchalter? A. I did.

Q. Did you talk to him about his being away? A. I don't think I did. The only thing I told him was Lep wanted to see him.

Q. Is that all that was said on the way down from the Bronx, all the way downtown? A. As

6070

Paul Berger--For People--Cross

far as I can remember, all the way downtown, and a few blocks away from his house.

Q. How long did you stay at the house? A. I think I was there five minutes.

Q. Did you talk to him during those five minutes? A. I told him, I said, Lepke wanted to see him.

Q. Did he tell you about his whereabouts? A. Who?

6071

Q. Rubin? A. He was there. What do you mean?

Q. Did he tell you what had happened, what was going on while he was away? A. No, sir.

Q. Did he ask you what was going on while he was away? A. No, sir, the only thing I told him was Lepke wanted to see him; he is a few blocks away from here.

Q. Did he tell you that Brooklyn was looking for him? A. Who?

Q. Did Rubin tell you Brooklyn was looking for him? A. No, sir.

6072

Q. Did he tell you that the Police Department was looking for him? A. If I am not mistaken, I think he told me a cop was to his house.

Q. Did he tell you from where the cop was? A. I don't remember definitely.

Q. Did he mention the Dewey investigation? A. I don't remember that definitely; the best of my recollection is he told me there was a cop around to his house.

Q. Where did Rubin live at that time? A. In the Bronx.

Q. What street? A. I cannot remember that.

Q. Where did you meet Buchalter with Rubin on the way from the Bronx? A. You mean when

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6073

I took him out of his house, when I took Rubin?

Q. Yes. A. A few blocks away from there.

Q. How many blocks is a few blocks? A. Between ten or fifteen blocks, about that area—about five or ten minutes ride from his house.

Q. Buchalter remained in the Berough of Manhattan, didn't he? A. I don't remember that definitely.

Q. Do you know where you let him off? A. Well, about ten minutes ride from where I let him off to Max's house.

6074

Q. It took you about ten minutes to drive back? A. There was some traffic.

Q. If there was no traffic you could go fairly fast? A. I don't definitely remember.

Q. It took you ten minutes to go between ten or fifteen blocks? A. I figured on that time; I did not time myself.

Q. Was anybody following you in an automobile from the point you picked up Buchalter on the way up to Rubins'? A. From the point I picked up Buchalter?

Q. That night on the way to meet Rubin? A. Not as I know of.

6075

Q. Did Buchalter tell you to go through side streets? A. He was pretty careful. I was watching through the mirror. I went through a one-way street to see if I am getting followed.

Q. Buchalter and Rubin spoke right under the awning, is that right? A. Yes, sir.

Q. Your car was parked right at the gutter, right in the gutter, right at the curb? A. Yes, sir.

Q. Did they talk to each other under the store awning? A. Under the awning.

6076

Paul Berger—For People—Cross

Q. Was the store lit? A. I don't remember definitely.

Q. They did not hide in a hallway? A. No, sir.

Q. They did not go into your car to talk? A. Well, after they spoke a few minutes they came in my car.

Q. How many minutes is a few? A. Between five and ten minutes.

6077

Q. So for five or ten minutes at that time they stood out in the public street? A. Under the awning.

Q. It was not an enclosed awning, was it? A. No, sir.

Q. Incidentally, do you know when Buchalter entered the Perfection Coat Company? A. Do I know when?

Q. Yes. A. I do not.

Q. Do you know the year? A. I do not; I had nothing to do with it; how can I know?

Q. Had you seen Buchalter at the Perfection? A. Yes.

6078

Q. When was the first time you saw him at the Perfection? A. I don't remember that definitely.

Q. Was it in 1934? A. Maybe.

Q. Can you give us a better answer than that? A. No, sir, I cannot.

Q. When did you first meet Wiener from the Perfection? A. I know him from the trade.

Q. You knew him before Buchalter was a partner? A. Yes, sir. You mean Sam Wiener? There are a lot of them.

Q. The Perfection Coats? A. Sam Wiener?

Q. Yes. A. Yes, sir.

Q. Does that refresh your recollection that Buchalter did not join that concern until the latter part of 1934 or the early part of 1935?

A. Not definitely.

Q. Do you know when Gurrah left town in the year 1936, or 1937, rather? A. When he left?

Q. Yes. A. Just when he left, I don't know. Do you think they are telling me about that?

Q. You saw Gurrah and Buchalter together very often? A. Yes, sir.

Q. When did you stop seeing Gurrah and Buchalter together in 1937? A. All of a sudden I stopped seeing them around.

Q. Was it in June of 1937? A. No, sir; that was before 1937; he was away, if I am not mistaken, but Danny Fields, if I am not mistaken—

6080

Mr. Turkus: Does "he" refer to Gurrah?

The Witness: Yes, sir.

Q. When you got in trouble in July, 1937, with Mr. Dewey's office, you said you made a demand upon Weinstein for bail, isn't that so? A. That is right—just a minute, repeat that question.

6081

(Question repeated.)

A. That is right.

Q. You wanted a lawyer from him, too? A. Yes, sir.

Q. You made no such demand upon Buchalter, did you? A. He was not there.

Q. And you made no such demand upon him? A. No, sir.

6082

Paul Berger—For People—Cross

Mr. Turkus: I object. That has been answered by, "He was not there."

Q. You say he asked you to get in touch with a man named Diesenhaus, the last time you saw Buchalter? A. Yes, sir.

Q. You did not get in touch with Diesenhaus for a lawyer or a bondsman? A. No, sir.

Q. You went where, directly to Weinstein? A. When I came out.

6083

Q. While in jail, awaiting bail, you sent word to Weinstein? A. No, sir, not while I was in jail.

Q. When did you send word to Weinstein? A. I spoke to him myself.

Q. When? A. After I was bailed out.

Q. What did you say to Weinstein? A. I asked him why he didn't send up a lawyer and try to get me bail, and he told me — Of course, I had an argument with him — they said they cannot stick their heads out.

6084

Q. You went to Weinstein because you felt that Weinstein owed you an obligation? A. Well, he owed everybody, he owed quite a number of obligations.

Mr. Barshay: I move to strike it out.

Q. Berger, you were in jail and got out on bail in July of 1937 and went to the union for help, didn't you?

Mr. Turkus: I object to that as repetitions.

The Court: Objection overruled.

A. After I was bailed out?

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6085

Q. You went to the union for help, didn't you?

A. I thought that they should at least get me a lawyer.

Q. You were on the payroll of the union then?

A. So was Lepke.

Mr. Barshay: I move to strike out the answer and I ask your Honor to do something with this witness.

The Court: I am trying to find out what the last answer means— "That was Lepke," he said?

6086

Mr. Barshay: He said, "So was Lepke".

The Court: Strike it out.

Q. When you were arrested in this case you engaged Mr. Gardiner, of counsel, didn't you?

A. I did.

Q. Before your arrest what business were you in, I am speaking of June, 1941? A. Manufacturer.

Q. What was the name of the concern? A. S. B. and M. Corporation.

6087

Q. Can you tell us what that consisted of? A. Schwartz, Berger and Montlick.

Q. Was it you, Berger—you were in the corporation? A. Yes, sir.

Q. Did you invest any money in that corporation; yes or no?

Mr. Turkus: I object.

The Court: Sustained as irrelevant.

Mr. Barshay: Exception.

Q. Was that corporation engaged in doing government work? A. That is right.

6088

Paul Berger—For People—Cross

Q. Making Army uniforms? A. Yes, sir.

Q. Did you sign any of the bids given by the Government for contracts? A. Did I what?

Q. Did you sign any bids submitted to the Government before your corporation got the contract?

Mr. Turkus: I object. That does not go to credibility.

The Court: Sustained.

6089

Mr. Barshay: I am trying to lay a foundation for something, your Honor, that may attack his credibility.

Mr. Turkus: If that is the purpose, I will withdraw the objection, if it goes to credibility.

Mr. Barshay: I may not succeed, but that is my purpose.

The Court: Why don't you come down to the point?

Q. Did you sign personally an application for bids? A. I don't think I did.

6090

Q. Did your partner sign applications for bids?

Mr. Turkus: I object. That does not go to the credibility of this witness.

The Court: Sustained.

Mr. Barshay: Exception.

The Court: It is too far afield.

Q. Do you know of your own knowledge that one of the questions submitted in the application was whether or not any one of the corporation had a police record? A. Absolutely not.

Q. When you were arrested, on June 5, 1941,

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6091

on the charge of murder, you denied your guilt of participation in it? A. I did.

Q. You were arraigned in the Magistrates' Court on a short affidavit? A. I was.

Q. You had Gardiner as your lawyer? A. I did.

Q. You pleaded not guilty? A. I did.

Mr. Turkus: The law requires that.

Q. Isn't that so? A. That is right.

6092

Q. Did you then tell Gardiner to go to Weinstein and get for you a lawyer of the calibre of Martin Littleton? A. I did.

Q. Did you then go to Weinstein and demand, through your lawyer, that Weinstein pay all counsel fees in your defense? A. I asked him for a lawyer.

Q. At their expense? A. That is right.

Q. And then did you say that unless a lawyer was furnished by them of the calibre of the gentleman I mention, they would feel sorry? A. I did not say about the calibre. I asked for any lawyer. I did not say any calibre.

6093

Q. (The Court) Did you mention Martin Littleton? A. I did not mention it.

Q. (The Court) Who did? A. I don't know.

Q. Did you hear the name? A. Yes, sir, from my lawyer.

Q. Yes, of the calibre of Mr. Littleton? A. Yes.

Mr. Turkus: I object. How does it go to discredit this witness?

6094

Paul Berger—For People—Cross

Q. The union rejected your request? A. Not as far as I was told.

Q. Did the union furnish a lawyer for you? A. They did not, but they said they were going to take it up.

Q. When they took it up, did they reject your request? A. From what I was told.

Q. So they never furnished a lawyer for you? A. No.

6095

Q. You made no demand upon the defendant Buchalter for a lawyer, did you? A. Repeat that.

(Question repeated.)

A. Absolutely not.

Q. You felt then that the union was still obligated to you because you were one of the men who built it up, isn't that so?

Mr. Turkus: I object.

The Court: Sustained.

Mr. Barshay: Exception.

6096

Q. You demanded a lawyer at the union's expense because in your mind you acted for them and it was their obligation to protect you? A. Acted for them in what?

Q. In anything you did? A. I did not know anything I did—I did some things—a lot of things I done, that is, for Lepke.

Mr. Barshay: I move to strike that out.

The Court: Strike out the latter part.

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6097

Q. How long did you remain in jail? A. A little over a week.

Q. During that week you had not seen anybody from Judge O'Dwyer's office, had you?
A. While I was in jail?

Q. Yes—when did you get word from the union that they cannot stick their heads out and give you a lawyer? A. You mean after I was arrested in this case?

Q. Yes. A. I answered that question before.

Q. Was it a week after your arrest? A. Didn't I answer you that question? I told you that they said they would think it over—that is an answer.

6098

Q. That is the last answer you got from them?
A. Yes, sir. They were supposed to get in touch with a lawyer but they never did.

Q. You waited how long to get that answer before you decided to do something? A. About a week. I know the make-up of these people, you know.

Q. So at the end of the week your patience became exhausted, is that so?

Mr. Turkus: I object to the form of
—the question.

6099

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. At the end of the week, when you did not hear from the union, you decided to do something about it? A. Do what?

Mr. Turkus: I object to the form.

The Court: Objection sustained.

Mr. Barshay: Exception.

6100

Paul Berger—For People—Cross

Q. When you failed to hear from the union at the expiration of a week, did you then send word through this lawyer to the District Attorney of Brooklyn? A. That is right.

Q. You were angry at the union officials, weren't you?

Mr. Turkus: I object. His state of mind does not affect his credibility, whether he was angry at them or not.

6101

Mr. Barshay: I submit, your Honor, we are entitled to show his animosity and his motive.

Mr. Turkus: On that ground, I will withdraw it.

Q. You were incensed, weren't you, at the time? A. I was angry at the whole union, not at any particular official.

Q. You knew at that time that Buchalter had already been in jail, had already surrendered, already been tried, and already been convicted, and he was awaiting trial here, isn't that so? A. Yes, sir.

6102

Q. When were you taken out of jail and put into a hotel? A. After my lawyer got in touch with the District Attorney.

Q. How long after your arrest? A. The latter part of the week, about eight days.

Q. When did you have your first talk with any representative of Judge O'Dwyer's office? A. I had no talk at all. When I first was arrested I refused to talk.

Q. And you maintained that refusal for about a week—when did you have your first talk with respect to this case? A. When my lawyer got

in touch with Judge O'Dwyer and he had me brought to his office.

Q. Was there a stenographer present? A. No.

Q. When first was there a stenographer present when you talked to any representative of the District Attorney's office? A. I don't remember seeing any stenographer.

Q. Did you ever see any person sitting at a desk when some official was questioning you, either Judge O'Dwyer or anybody else, making notes while you were speaking? A. Well, when Mr. Turkus and Mr. Klein spoke to me.

6104

Q. Was there a stenographer then? A. Not as I know of; I seen him taking notes.

Q. Notes himself? A. Yes, sir.

Q. At any time in your recollection do you recall a stenographer being present when you spoke to a representative of the D. A.'s office? A. No, sir, not to my recollection.

Q. Did you speak to Captain Bals? A. I did.

Q. In the talk with Judge O'Dwyer and with Captain Bals, did you tell them you fingered Rubin on two occasions; yes or no? A. Yes, sir.

6105

Q. Have you ever been arraigned on a charge of assault, or attempted assault, with respect to the fingering of Rubin? A. Well, will you explain to me what is meant by that?

Q. I mean, had you ever been arrested for those two things? A. I was up before the Grand Jury on it in the Bronx.

Q. Did you sign a waiver of immunity? A. No, sir.

Q. You got immunity? A. I did not sign a waiver.

6

Paul Berger—For People—Cross

Q. You have not been arraigned for that in any court? A. I was only before the Grand Jury.

Q. You did not sign a single paper? A. No, sir.

Q. That was pursuant to instructions of your counsel? A. The District Attorney told me.

Q. In other words, you have not been arrested charged with fingering Rubin, either for assault or attempted assault? A. No, sir, I told you I went before the Grand Jury in the Bronx.

Q. While you were in jail did you receive any message from your partners that your pay was being cut off? A. No, sir.

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Mr. Barshay: I am leading to something which may affect his motive, and I have to lay my foundation for it.

The Court: All right.

Q. Were you getting your pay while you were in jail? A. That is right.

Q. Did any one in the District Attorney's office tell you, or your lawyer tell you, as a result of having received a message from the D. A.'s office, that unless you would turn State's evidence, the Government contract that your corporation had would be cancelled?

Mr. Turkus: I object.

A. No, absolutely not; not to my knowledge.

Q. After you turned State's evidence, Berger,

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6109

did the members of your corporation put you, or tell you they were going to put you off the payroll? A. They did not.

Mr. Turkus: I object. He has already answered it, Judge.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Are you living at the Bossert since your arrest? A. Yes, sir.

6110

Q. Are you allowed visitors? A. No, sir.

Q. Do you see your wife? A. I do.

Q. Do you see your son? A. That is right.

Q. Do you go out? A. I go to see them.

Q. You go for automobile rides? A. To see them.

Q. Do you go for automobile rides?

Mr. Turkus: Objected to as already answered.

Q. Did you visit your place of business? A. No, sir.

6111

Q. Did you go to your place of business—withdrawn. Did you visit the premises opposite your place of business in the custody of the police?

Mr. Turkus: I object. That does not affect his credibility.

Mr. Barshay: It may affect his motive in giving testimony, if he got the treatment that I am trying to bring out.

The Court: To keep him good natured, you mean?

Mr. Barshay: Yes.

6112

Paul Berger—For People—Cross

Q. Did you go with policemen, did you go with policemen and go into a restaurant opposite your place of business? A. No, sir, never.

Q. Never at all? A. Absolutely not.

Q. Do you know Cy, who worked there as a foreman? A. I do.

Q. Didn't you meet him opposite the place of business in the custody of police? A. No, sir, I never did.

Q. Not even once?

6113

Mr. Turkus: Objected to as already answered. He said "No" twice.

Q. Were you getting your pay from the corporation ever since?

Mr. Turkus: Objected to. It does not affect his credibility on the issue of this indictment.

The Court: Objection overruled.

A. Yes, sir.

6114

Q. Can you tell me how much a week? A. \$150 a week.

Q. Did you ever go into the Half Moon Hotel? A. I did not.

Q. Had you seen Tannenbaum at the hotel? A. I did not.

Q. Had you seen Mrs. Rosen? A. I never seen her, never know her.

Q. Have you spoken to Mrs. Tannenbaum? A. I did.

Q. And was that on the Boardwalk near the Half Moon Hotel? A. That is right.

Q. How many times? A. Once.

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6115

Mr. Turkus: I object. This does not go to his credibility.

The Court: Objection sustained; a fishing expedition.

Mr. Barshay: I am not fishing, because he answered correctly. I am trying to show opportunity for association with prospective witnesses. She might be an intermediary. It is my province to prove it, if I can.

The Court: You cannot guess at it.

6116

Mr. Barshay: I am not guessing, sir.

Mr. Turkus: Is that a representation to the Court that Mr. Barshay has made?

Mr. Barshay: I make no representations. I am making an effort to discredit this man, and nothing else, no more than you vouch for the integrity of your witness.

Mr. Turkus: I will tell the jury what I vouch for in this case before it is over.

Q. Were you told what Rubin testified to in this case? A. Absolutely not.

6117

Q. When for the last time, before you took the stand, did you speak to any Assistant District Attorney? A. Repeat that question.

(Question repeated.)

Q. Tell me when. A. You mean before I took the stand on Friday?

Q. Will you tell me which assistant it was?

Mr. Turkus: He is asking you a question.

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Paul Berger—For People—Cross

Q. Yes, that is what I mean. A. Before I took the stand?

Q. Yes. A. Turkus.

Q. When did you speak to him before you took the stand? A. He told me to be down Friday morning.

Q. Is that all? A. That is right.

6119

Q. Did you read the Grand Jury minutes before you took the stand— Question withdrawn. Did any official read to you the questions and answers that you gave before the Grand Jury, before you took the stand? A. Absolutely not.

Q. Now, you said you knew Rosen when you were a contractor with the World's Clothing Exchange? A. That is correct.

Q. Can you tell me what year that was? A. You mean when I had actual dealings with him?

Q. Yes, what year? A. What is the question?

(Question repeated.)

A. To the best of my recollection, it was 1934 or 1935.

6120

Q. At that time Rosen was working for Louis Cooper, wasn't he? A. I presume so.

Q. Had you ever been at Cooper's place? A. I had.

Q. While Rosen was working there? A. I don't recall while he was working.

Q. He was working there at the time he had business with your concern? A. Yes, sir.

Q. Did you ever see him there? A. Where?

Q. Rosen, at Cooper's place, at the garage? A. I do not definitely remember I saw him at the place.

Q. Did you see Mendy Weiss at Cooper's place? A. No.

Q. Never? A. I never did—I think I saw Lepke there—I am not sure whether I saw—

Q. (interrupting) I am asking you about Mendy Weiss. A. Where?

Q. At Cooper's place? A. No, sir, I did not.

Q. Did you ever talk with Cy, either on the telephone, since you have been under arrest, or personally?

Mr. Turkus: Who is Cy?

Q. The foreman of your premises. A. Yes, sir.

Q. Where did you speak to him? A. Over the phone.

Q. You were allowed to talk from the Hotel Bossert to your place of business?

Mr. Turkus: I object. That has nothing to do with the witness' credibility.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Did you instruct your concern to give any part of your salary to some woman? A. Absolutely not.

Mr. Barshay: Will your Honor permit me to reserve one or two questions? I am not now in a position to ask him.

The Court: You have had a very, very long examination and I thought you had concluded it. It is within the Court's discretion. If there is really something

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which you think should be inquired into, all right; otherwise proceed and finish with your cross-examination.

Mr. Barshay: I am finished then.

Cross examination by Mr. Talley:

Q. Did I understand you correctly in saying—
Question withdrawn.

6125

Mr. Talley: If your Honor please, I move to strike out all the testimony given by the witness, direct and cross, up to now, upon the ground that no witness has a right to be called by the District Attorney to give testimony on behalf of the People, and then, upon cross-examination, take refuge behind the provision which says a man is not called upon to testify against himself—that he may claim the privilege of refusing to testify because it might incriminate or degrade him. I submit, sir, it is my understanding of the law that when a witness is submitted on behalf of the People, as in this case, he cannot take refuge upon cross-examination in any so-called claimed constitutional right of safety. As Your Honor has no right to allow any of the testimony on direct examination or on cross examination to go to the jury in this case, he having refused to answer certain questions propounded to him by counsel upon the ground that to answer those questions would incriminate him, he has either got

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to go all the way or none. He cannot answer the questions that he chooses to answer and then decline answering another line of questions because he chooses not to answer those questions. I therefore move that the entire testimony be stricken out and that the jury be instructed to disregard it.

Mr. Climenko: May the record show that the defendant Buchalter joins in that motion?

6128

The Court: All of you join?

Defense Counsel: Yes.

The Court: The law is against all of you, so all of you are overruled.

Defense Counsel: Exception.

Mr. Talley: Before I commence my cross-examination on the part of my defendant of this witness, I ask your Honor to remove the court officer standing within one foot of the back of this witness there on the ground that it tends to distract the jury and to prejudice the defendants in this case.

6129

The Court: The officer is in the proper place.

Mr. Talley: I ask your Honor to remove the big drop you have hanging on the wall showing the scene of the alleged murder in this case.

The Court: There is no objection to that. It can be taken to any part of the court room you so desire at any time you request, or hidden from view. It is not prejudicial in any way.

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Mr. Talley: I submit it is.

The Court: Then take it away. Please turn it so the jury will not be prejudiced by it.

(Exhibit removed from wall.)

A Juror: May we have a five minute intermission, please?

The Court: We will take a ten minute recess. Everybody will be in order, please. Now, gentlemen, remember the admonition previously given. First, the witness goes out.

6131

(The jury then left the court room.)

(The defendants were remanded.)

The Court: We will reassemble at 4:35 P. M.

(The jury returned to the courtroom and the trial continued.)

6132

PAUL BERGER, resumed the stand, and further testified, as follows:

Cross examination by Mr. Talley:

Q. Did you say that you gave yourself up?

A. In the summer of this year—the spring of this year—to the District Attorney.

Q. Did you say you were living at the Hotel Bossert? A. I am.

Q. And what other hotels? A. No others.

Q. Did you ever live at the Towers Hotel in Brooklyn? A. I don't know even where it is.

Q. What? A. I don't even know where the Towers Hotel is.

Q. You do not? A. Absolutely not.

Q. Do you know a woman named Dorothy Katz? A. Shall I answer that question?

The Court: Yes or no.

A. Yes, sir.

Q. Did she ever visit you since you have been in custody? A. No, sir.

Q. She did not visit you at the Towers Hotel?

A. I don't even know where the Towers Hotel is.

Q. The answer is no? A. I don't know even where it is.

Q. Is your answer no? A. Absolutely not.

Q. You have been keeping that woman, haven't you, living with her?

Mr. Turkus: I object, ~.

The Court: Objection sustained.

Mr. Talley: Exception.

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Q. You are not a citizen of the United States, are you? A. I thought I was.

Q. How long did you think you were, how long a time was it during which you thought you were a citizen of the United States? A. I thought my father took out his papers; besides that I thought I was in the Army and that made me a citizen.

Q. Have you thought you were a citizen for the last twenty years? A. I did.

6137

Q. Did you vote every year? A. I never did.

Q. If you thought you were a citizen of the United States, would you not have voted?

Mr. Turkus: I object. That is argumentative. All citizens don't vote.

Mr. Talley: I am cross-examining. I have a right to be argumentative in cross-examination.

Mr. Turkus: All citizens do not exercise the right of franchise, unfortunately.

The Court: Objection sustained as argumentative.

6138

Mr. Talley: Exception.

Q. When do you say you learned you were not a citizen? A. When Judge O'Dwyer was questioning me.

Q. That was this year, 1941? A. Yes, sir.

Q. Before that you had sworn on two different occasions that you were a citizen, didn't you? A. I thought I was; I answered that.

Q. You answered you were? A. That is right, definitely under the impression I was.

Q. What effort did you make to find out

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whether you were a citizen or not? A. I made no effort; I took it for granted that I was.

Q. So without making an effort or taking any advice, you made two affidavits at various times that you were a citizen of the United States, is that true?

Mr. Turkus: I object to that as repetitions.

Mr. Talley: I have a right to be repetitions on cross-examination.

6140

The Court: Objection overruled.

A. I definitely thought I was.

Q. Because you were in the Army, is that one of the reasons? A. Yes, sir, because I was twice in the Army; that was one of the reasons; I enlisted twice; that is more than a lot of citizens would do that were born in this country.

Q. One of those Army experiences was joining the Militia in Brooklyn, is that what you call the Army? A. After I was discharged from Fort Slocum, yes, sir, I joined the Militia, and I was sent up to patrol the Aqueduct that furnishes the water to New York. At the time of the war they thought they would get poisoned water. I was up there guarding it in 1917.

6141

Q. Do you consider that service in the United States Army? A. What?

Q. Do you consider being in the 14th Regiment, being in the United States Army? A. No, sir, I was in Fort Slocum with the United States Army.

Q. How long were you in the Army at that time? A. A number of months.

6142

Paul Berger—For People—Cross

Q. How many months? A. I would say about three months.

Q. So because of that three months service at Fort Slocum you regarded yourself as a citizen?

Mr. Turkus: I object. He said he had a dual reason.

The Court: Objection sustained.

Mr. Talley: Exception.

6143

Q. Was your father's name Berger? A. No, sir.

Q. What was his name? A. Hamburger. That is the reason why I changed it, because I was kidded when I was in the Army, it sounded German, and for other reasons—that is right. I changed it after I came out.

Q. How did you have the name changed from Hamburger to Berger? A. I changed it myself on account I was being kidded when I was in the Army, and it sounded a whole lot like German, and I just took the "Ham" off. Besides that, there was a "Ham" on there and I was a Jew, and I wanted the "Ham" off.

6144

Q. So you dropped it? A. Yes, sir, that was a couple reasons.

Q. You did not have any legal proceedings? A. No, sir.

Mr. Turkus: I object. There is no law you have to have a legal proceeding to change your name.

The Court: Will you come down to the point?

Q. When you went into the Army did you give your name as Berger or Hamberger? A. Hamberger.

Q. Was it when you came out of the Army that you changed it to Berger? A. After I was discharged from the Militia, the 14th Regiment here.

Q. Did you give your name when you joined up with the 14th Regiment as Berger or Hamberger? A. Hamberger.

Q. So then when you discontinued your association with the 14th Regiment, then you began using the name of Berger? A. Yes, sir, I told you the reason why. If you had that name, I think you would change it.

Q. You're getting quite comical, aren't you? A. It is the truth. You asked me those questions and I am answering you. It is true.

Mr. Turkus: I must object to this.

The Court: Objection sustained.

Q. You are feeling pretty good about this case, aren't you?

Mr. Turkus: I object.

The Court: Don't answer it. Objection sustained.

Q. You are under arrest in connection with the murder of Joseph Rosen, aren't you? A. I am.

Q. You have not been indicted, have you? A. I don't think I was.

Q. You know you were not, don't you? A. Yes.

Q. You do not expect to be punished in any

6148

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way for your connection with the killing of Joseph Rosen, do you? A. I don't know about that.

Q. Have you any doubt about it? A. I have—I am leaving myself to the mercy of the District Attorney and the mercy of the Judge.

Q. What did the District Attorney or any of his assistants promise you in connection with the killing of Joseph Rosen? A. They promised me nothing.

6149

Q. Nothing at all? A. No, sir.

Q. Do you mean that? A. Positively, sir.

Q. Didn't your lawyer tell you—didn't your lawyer tell you that you could not be indicted for killing Joseph Rosen because you testified before the Grand Jury and did not sign, under legal advice, a waiver of immunity? A. No, sir.

Q. You never heard that? A. The lawyer told me if I had anything to do with it, to tell the truth.

Q. Did he tell you that if you testified before the Grand Jury you could not be indicted? A. That is right.

6150

Q. Did the District Attorney tell you that, too? A. Yes, sir.

Q. So you know now you cannot be indicted for the murder of Joseph Rosen? A. That is right.

Q. And the reason you gained immunity was by promising to give the testimony you have given in this trial, isn't that so?

Mr. Turkus: That is a legal question I object.

Mr. Talley: I have a right to show bias, motive.

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The Court: The question calls for an answer on a point of law, and the previous question and answer covers that point. /
Objection sustained.

Mr. Talley: Exception.

Q. Well, Berger, you refused to testify before the Grand Jury unless you got immunity, didn't you? A. I don't understand that question.

Q. You understood when you were asked about not signing a waiver of immunity, didn't you know what that means? A. Yes, sir.

6152

Q. My question is, didn't you refuse to testify before the Grand Jury this year, 1941, unless you got immunity from punishment? A. No, sir, that was not so. I was only told that. I did not refuse. I made my mind up to tell the truth. That is what I am doing.

Q. Everything you have told us is the truth? A. Today, yes, sir, all times since I have spoke to the Judge, yes, sir.

Q. Well, now, as long as you are telling only the truth—

6153

The Court (Interrupting): When you say, "Judge", who do you mean?

The Witness: Judge O'Dwyer.

Q. You said you were familiar with the terms used in the underworld? A. Yes, sir.

Q. What does the term "fingerman" mean? A. Pointer.

By the Court:

Q. What does it mean? A. The same thing as a fingerman.

6154

Paul Berger—For People—Cross

Q. In connection with what? A. You know—he was a Judge, ask him.

By Mr. Talley:

Q. Yes, and without any further quibbling, what does "finger-man" mean in your language, in the underworld?

6155

Mr. Turkus: I object to the form of the question. It embraces "without any further quibbling."

Mr. Talley: Isn't he quibbling?

The Court: Objection sustained as to form.

Q. I ask you again what is meant by a "finger-man"?

Mr. Turkus: Objected to as already answered.

By the Court:

6156

Q. Using the term that Judge Talley mentioned, and your answer, what is the pointing done in connection with? Is it to point out a man to be bumped off, or to be beaten? A. Either that, or to be beaten.

Q. Or given a ride? A. That is right.

Q. Is that what it means, somebody has to identify? A. Somebody that knows the man.

Q. And then others do the work? A. Yes, sir.

By Mr. Talley:

Q. Don't you know it is only used in connec-

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6157

tion with pointing out a man who is to be murdered, or whose murder is attempted? A. I do not.

Q. It means pointing out a man who is to be "hit", in your language, does it?

Mr. Turkus: I object. He gave a more comprehensive definition of "fingerman" than that.

Mr. Talley: He gave a very fine definition of what it means to be "hit", and I am asking him now if that is what a "fingerman" is.

6158

The Court: The definition includes that but does not make it exclusive.

Q. You do not deny you were the fingerman in the killing of Joseph Rosen? A. No, sir.

Q. And you know that makes you an accomplice in this murder, don't you? A. I know it now, but I did not know it then.

Q. You did not know when you pointed out Rosen, as you say you did, that you were a participant or accomplice? A. Absolutely not.

6159

Q. In his subsequent murder? A. Absolutely not; I never had the least idea that man was going to be killed.

Q. When you acted as fingerman against Max Rubin, that was different, wasn't it? A. That is right.

Q. You knew then - A. (Interrupting) That was the first time I ever pointed out a man to get killed.

Q. When you pointed him out you knew that he was to be killed? A. Absolutely not.

Q. Rubin? A. I am talking about Rosen.

6160

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Q. I am talking about Rubin. A. Why don't you say who you are talking about?

Q. I said who I was talking about.

Mr. Turkus: Objected to as already answered.

The Court: Objection overruled.

Q. I am talking about Rubin. A. Talking about Rubin, all right.

6161

Q. My question is, when you acted as fingerman for Rubin, you knew he was to be killed? A. Yes, sir. I did not know then.

Q. You not only pointed him out once, but twice? A. I did.

Q. And in the case of Rubin, you yourself made arrangements, in part, as to where he was to be and where you were to be? A. That is right, by orders.

Q. You never did anything since you left the 14th Regiment without orders, did you?

6162

Mr. Turkus: I object to the form of the question.

The Court: Objection sustained.

Q. Did you know the Monday after Rosen was killed, when you say you read it in the newspaper, did you know then that you had been an accomplice in his murder?

Mr. Turkus: I object. It makes no difference.

The Court: Objection sustained.

Mr. Talley: Exception.

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6163

Q. Besides the name of Berger, which you are now using, did you ever use any other names in the underworld, in which you were so familiar?

A. Not as I can recollect.

Q. Your memory is pretty good? A. To a certain extent.

Q. Were you ever known or heard yourself referred to as "Crazy Paul?" A. Don't be ridiculous.

Q. I am waiting for an answer to my question, yes or no.

6164

Mr. Turkus: I object. It has been answered.

The Court: It makes no difference what he heard himself called. Sustained.

Q. Wasn't your nickname in the underworld, "Crazy Paul"? A. That's the most ridiculous thing I ever heard a lawyer ask me.

Q. You mean to convey by that that your answer is no? A. Absolutely no.

Q. Why didn't you say so? You have been also known in the underworld as—

6165

Mr. Turkus (Interrupting): I just want to make an objection.

Mr. Talley: I will ask the District Attorney to take his seat until my question is finished.

Q. Were you also known among your associates as "Whackey"?

Mr. Turkus: I object. "Also known".

6166

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He has indicated he was not known under that alleged other name.

The Court: Objection sustained.

Q. Were you known as "Whackey"? A. No, sir.

Q. Were you known as "Dopey"?

6167

The Court: What a person is called by an outsider is something that he is not responsible for. But the name which he adopts himself and uses as his own is something which may be inquired into.

Mr. Talley: I take exception.

Q. Did you tell us all the places you worked when you say you were taken out of the Army by your mother?

Mr. Turkus: I object to the form of the question. He was discharged from the Army, being under age.

6168

Mr. Talley: He said he was taken out by his mother's request because he was under age, too young to enlist.

Mr. Turkus: She, of course, would have no authority to bodily remove him from the United States Army.

The Witness: I would like to hear the question.

(Question repeated by reporter.)

A. Maybe I missed a couple of places.

Q. Go back in your recollection and tell us, if you can recall, any place you worked after you came out of your military experience; just

go back in your recollection and tell us if there are any others which you have not yet mentioned. A. I answered before in direct examination the places where I worked.

Q. And that is all the places you remember you worked? A. That is all I can positively remember, unless there may be one or two which I did not say.

Q. Did you ever work in an insane asylum?

A. Worked as what?

6170

Mr. Talley: Will your Honor direct the witness to answer the question?

By the Court:

Q. Did you ever work in a State hospital in any form at all? A. I did.

Q. As an orderly? A. An attendant.

Q. What State hospital? A. I think it is around Middletown, New York.

By Mr. Talley:

6171

Q. How long did you work there? A. About two weeks.

Q. Is that all? A. Yes, sir.

Q. Why didn't you tell us that? A. You did not ask me that.

Q. The District Attorney and Mr. Barshay asked you very directly where you worked. It was the District Attorney, if I remember. A. I may have slipped on probably a couple of places.

Q. I ask you to try to recall them now. You stated you have given all you remembered? A.

6172

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That is right. There may be one or two left out.

Q. Can you figure that out now? A. I did not have anything to hide.

Q. Why didn't you tell us you worked in the Middletown State Hospital for the Insane? A. Because I forgot about it. There is nothing to hide; there is no crime to work as an attendant in a hospital, is there? I worked for my money, didn't I? I did not steal anything there. I worked there.

6173

Q. You had a sister as an inmate of an insane asylum right here in this vicinity, didn't you?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Did you ever make a statement that your experience in the Middletown State Hospital for the Insane had made you a little crazy, too? A. Absolutely not.

6174

Q. Now, were your parents Russian?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. What language did they speak when you were at home? A. With them?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Did you speak Russian? A. No, sir.

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6175

Q. Did you speak Yiddish? A. I do.

Q. You do now? A. At that time I did, too.

Q. And do you now? A. Certainly.

Q. And Yiddish is a form of the Russian language, isn't it? A. Not to my knowledge.

Mr. Turkus: I object.

The Court: Sustained as immaterial.

Mr. Talley: Exception.

Q. You told us you could not even pronounce the name that Rubin was using? A. I did.

Q. Despite the fact that you spoke Yiddish? A. Yes, sir, that is a fact, correct.

Q. You cannot either remember the name or pronounce it if you knew it? A. Yes, sir, there is a difference between Jewish and Russian like Chinese and English.

Q. Isn't Yiddish a corruption of the Russian language? A. No, sir; maybe with the German but not with the Russian. I will tell you something now.

Q. What was the language that you spoke when you were a boy in your home?

Mr. Turkus: I object.

The Court: Sustained as immaterial.

Mr. Talley: Exception.

Q. Now, are you now in business at 599 Broadway? A. I am.

Q. In this clothing business that has a contract with the United States Government? A. That is right.

Q. During all the time you have been under arrest and in the custody of police officers you

6176

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Paul Berger—For People—Cross

say you have lived in the Hotel Bossert? A. I was.

Q. You still own an automobile, don't you? A. I do.

Q. You secretly have been taken out of the Hotel Bossert and brought to 599 Broadway, your place of business? A. Absolutely no.

Q. That is not true? A. Absolutely no.

Q. Have you driven around in your automobile with police officers? A. I drove any place the police told me; I drove them with me.

6179

Q. Where?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Did anybody else drive your automobile besides yourself? A. No, sir.

Q. You have been in the custody of the Police Department in the hotel since about May of this year, 1941—when were you put in custody, in the hotel? A. In the month of June.

6180

Q. June of 1941? A. Yes, sir.

Q. You have kept your automobile since June, 1941? A. Yes, sir. I had most of it paid out before I was arrested.

Q. You have used it since June, 1941, haven't you? A. That is right.

Q. And to what use have you put it to, how often have you been using it?

Mr. Turkus: I object. That does not go to his credibility.

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The Court: It is immaterial. Sustained.

Mr. Talley: Exception.

Q. Haven't you been using it to take drives for yourself and police officers in whose custody you have been since June, 1941?

Mr. Turkus: Objected to as repetitious.

The Court: Objection overruled.

A. That is right; drives me home.

Q. How often do you drive to your home from the Hotel Bossert? A. I refuse to answer that question.

Q. You refuse to answer that upon what ground? A. Well, on the ground that certain people would find out where I am living.

Mr. Talley: I ask the Court to inform the witness to answer my question.

Mr. Turkus: I ask that the witness be allowed to refrain from divulging his address.

The Court: Why don't you object?

Mr. Turkus: I do.

The Court: Objection sustained.

Mr. Talley: I did not ask the address of his home. I am not asking it now.

The Court: The question, as I understood it, was how often he drove home.

Mr. Talley: That is what I asked him. In an automobile that he is permitted to retain and use while in custody and being on trial for the murder of Joseph Rosen. I have a right to show the manner of

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treatment that is being accorded to him, in exchange for the testimony he has given here. That is one element.

Mr. Turkus: The District Attorney cannot take his property away.

The Court: Sustained as incompetent, and for the further reason that as a matter of public policy the comings and goings to public places of any witness of this character should not be divulged.

6185

Mr. Talley: I am not asking him about his comings and goings. I am asking about the use of this automobile. It is unprecedented. Nobody ever heard of such an arrangement being made with a witness in a criminal trial.

The Court: Take your exception.

Mr. Talley: I do take exception.

The Court: You say it is unprecedented. I thought that Judge O'Dwyer learned it from Mr. Dewey. That has been my impression.

6186

Q. Did you testify you are getting \$150 a week now from your business at 500 Broadway?

Mr. Turkus: Objected to as incompetent and irrelevant.

The Court: Objection overruled.

A. Did I testify where?

Q. Here in this courtroom, this afternoon. A. That is right.

Q. You knew where I meant, didn't you? A. Now I know; I didn't know where you meant.

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Q. Is it correct that you have been getting that every week? A. I have.

Q. For how long a time? A. Since I was in business.

Q. How long is that? A. Since the first of this year.

Q. January 1, 1940? A. Yes, sir.

Mr. Turkus: 1941.

Q. Is that right, 1941 or 1940? A. 1941.

6188

Q. January 1st of this year? A. Yes, sir, this year.

Q. What was your source of income in 1940? A. I was in another business.

Q. What business were you in? A. I was contracting.

Q. Contracting clothier? A. Yes, sir.

Q. Where was your place of business? A. One of them was No. 8 Astor Place.

Q. How long were you in business at No. 8 Astor Place? A. Well, I would say from about June or July of 1940.

Q. Just those two months? A. No, sir, I was there from that time on until about the first of the year.

6189

Q. June or July of 1940 until the first of the year? A. Yes, sir.

Q. Before June or July of 1940 what was your business? A. That is the time I left the Berger Clothing.

Q. What was your business between January of 1940 and July of 1940? A. I was in business, — the Berger Clothing Company.

Q. How long before June or July of 1940 had you been with the Berger Clothing Company?

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Paul Berger—For People—Cross

A. About two years to the best of my recollection.

Q. How much did you get from the Berger Clothing Company? A. Toward the end of the year?

Q. For the two or three years you were in business with the Berger Clothing Company, what was your income or draw? A. At one time it was \$200. Half of it went to Mendy. Then it was cut down. Besides that there was more money taken out which I gave to Mendy.

3191

Q. How much did you manage to hold onto yourself? A. Nothing—\$5,000 went out.

Q. During that time you were in business with Berger Clothing Company you drew nothing? A. I did, one-half.

Q. You just told us you got nothing. Which is true? You did get something or you didn't? A. At the time I got \$200, and \$100 went to Mendy. When I drew out \$5,000, that went to Mendy; I got nothing out of the \$5,000. Only out of the \$200 I got half.

3192

Q. How much did you get out of the business, I asked you. A. I answered that question.

Q. Answer it again.

Mr. Turkus: I object; one answer is enough.

The Court: He said he got \$100 a week. Objection sustained.

Q. For three years, two and a half or three years you were with the Berger Clothing Company, did you get \$100 a week? A. I did not.

Q. How many weeks did you get \$100? A. I said \$200 a week; and not \$100.

Paul Berger—For People—Cross

6193

Q. You said you gave \$100. A. \$100 I gave away to Mendy. It was quite a number of months.

Q. That is, you got \$100 a month for yourself? A. A week.

Q. For yourself? A. To be exact, I got \$200; \$100 went to Mendy, and \$50 I got from the union, I got from Mendy. So legitimately I only got \$50, not \$100.

Q. I am trying to get you to tell us how much you got for yourself. You are saying you are a Santa Claus, giving away money. A. I didn't give it away; I would not be here—you would not be here to question me if I did not get it.

6194

Mr. Turkus: I object to the word "Santa Claus."

The Court: Strike out "Santa Claus."

Mr. Talley: I move his whole answer be stricken out.

The Court: Strike it out.

Q. I will ask you again until I get an answer: How much did you get from the Berger Clothing Company during the two and a half or three years you were employed there, for yourself?

6195

Mr. Turkus: Objected to as repetitions.

The Court: Objection sustained.

Mr. Talley: Exception. Will your Honor tell me what the answer was, if it is repetitions?

The Court: No, the Court is not under examination.

Mr. Talley: But this witness is, and

6196

Paul Berger—For People—Cross

your Honor sustains an objection to testimony that is not on the record. I take an exception.

The Court: Don't forget that you are no longer a judge. I am the judge here.

Mr. Talley: I take exception to that remark by the Court.

6197

Q. In the year 1940, how many months of that year were you with the Berger Clothing Company? A. I will say between five and six months.

Q. How much was your income for that five or six months from the Berger Clothing Company? A. Very little because the firm was going on the downward grade.

Q. How much? You understand. A. I am answering your question.

Q. Answer it in dollars. A. I said at the utmost I only got \$50. a week, and some weeks I got nothing.

Q. Are you able to tell us how much you got in those six months? A. No, I am not; it is on the record.

6198

Q. Where? A. In the books.

Q. The Berger Clothing Company's books? A. Absolutely.

Q. Is that still in business? A. The books are there.

Q. Where are they? A. In the place, Berger has them.

Q. Berger has a place now of its own? A. I think so.

Q. Was there a man named Drucker employed in that Berger Clothing Company? A. He was put in there by Mendy.

Paul Berger—For People—Cross

6199

Q. Did you give him any money? A. To give to Mendy.

Q. Did you give Drucker money? A. To give to Mendy, I did.

Q. Is your answer yes? A. Yes, sir, I am answering it, to give to Mendy.

Mr. Talley: I move to strike the latter part of the answer out, to keep the record intelligent.

The Court: Motion denied.

Mr. Talley: Exception.

6200

Q. Did you see Drucker give any money that you gave, to Mendy Weiss? A. No, sir.

Q. No? A. At that time I was under police guard and I could not get near Mendy; I could not sneak away from them; I had to give it to Drucker.

Q. Your answer is you never saw Drucker give any money to Mendy Weiss, that you had given to Drucker? A. No, sir, I will tell you the reason why. If I saw him, I would give it to him myself.

6201

Q. The fact of the matter is, all the money you delivered or tried to deliver, you gave to Mendy Weiss out of the Berger Clothing Company, is the money you gave to a man named Drucker, is that right? A. No, sir. There were times when I gave Mendy money myself, and there were times I could not get away from the cops that were watching me, so I gave it to Drucker, that he should be able to give it to him, because I could not get away that night.

Q. Then you say you never saw Drucker hand

6202

Paul Berge —For People—Cross

it to Weiss? A. No, sir, because I could give it to him myself if I did not have Drucker to give it to him.

Q. How much of this money you say you gave to Weiss; did you give through Drucker? A. Quite a bit of money; I cannot remember definitely.

Q. Now, since you have been in custody, did you talk to a man named Allie Tannenbaum? A. I did not.

6203

Q. When did you talk with him last? A. Oh, sometime before he was arrested.

Q. When do you fix that time as? A. The beginning of the year 1940.

Q. Did you talk to him in 1940? A. I did, before he was arrested.

Q. You have had no talk with him since you were arrested in the Rosen case? A. No, sir.

Q. Have you talked with Rubin since you were put under arrest in the Rosen case? A. I did not talk to him; he spoke to me.

Q. You did not talk to him? A. No, sir.

6204

Q. At any time or any place? A. In the District Attorney's office.

Q. You met there? A. The first time, when I was arrested.

Q. Is that the only time you saw him? A. That was the only time.

Q. And no other time? A. I seen him up in the Bronx before we went before the Grand Jury.

Q. Was he there at the same time you were there before the Grand Jury? A. He was there that day, but he was not there at the same time.

Q. Did you talk to him there? A. No, sir.

Q. Where did you talk to him about this case?

A. When I was picked up; when I was brought over to the District Attorney's office. I told him everything. You might as well—

Q. Tannenbaum told you that? A. I said that to Maxie Rubin.

Q. Is that the only talk you had with Rubin? A. That is the only time I spoke with him.

Q. Now, Tannenbaum was there on the same day, wasn't he, when you say Rubin talked to you? A. No, sir, I have ~~not~~ seen Tannenbaum.

Q. Wasn't Tannenbaum present in the Bronx when you went before the Grand Jury there?

A. He was brought up there.

Q. Did you see him? A. I seen him passing by.

Q. Didn't you talk with him up there? A. I did not.

Q. When was this talk you had with Rubin, such as you have described, in the District Attorney's office? A. I answered that, didn't I?

Q. Answer it again, please. A. I said in the District Attorney's office.

Q. I asked you when that was. A. When I was arrested.

Q. When was that? A. When was I arrested?

Q. Don't you know? A. Not definitely. It is the 4th or the 5th. It is on the record.

Q. You tell us your best recollection as to the day you were arrested. A. Either the 4th or the 5th of June.

Q. And have you been in custody ever since?

A. I have, after I came out of the Tombs.

Q. Now, you told Mr. Barshay you were a good clothing cutter? A. I did.

Q. You still say you are? A. I presume so.

6208

Paul Berger—For People—Cross

Q. And you could always get a job as a good clothing cutter, couldn't you? A. I could at one time, but I will tell you one thing now, that is, I told the truth, and I think the union may stop me from getting a job. I could at that time, but now that I have told the truth, I am under the impression now the union would stop me from getting a job.

Q. The what? A. The union.

6209

Q. Because of your confession of complicity in the murder of Rosen; is that why they would stop you? A. No, sir.

Q. Because you are a murderer? A. Absolutely not, because I told them the truth, that I got money from them and I gave the money to Lep and Danny Fields.

Q. You think because you tell the truth now, the union would not allow you to go back in their ranks? A. Absolutely not.

6210

Q. How much could you earn as a cutter when you were working as such? A. \$60 a week; maybe \$10 more \$70. Some jobs pay more. The scale on them now is \$60. Cutters at different places, some get \$70.

Q. You went into the employ of the union as a strong-arm man, when you got \$60 or \$70? A. At that time it was not \$60 or \$70; the scale was \$50 to \$55.

Q. Although making \$55 a week, you took a job as a slugger in the union? A. I did.

Q. Strong-arm? A. Yes, sir, after working hours and sometimes before working hours, but I worked.

Q. You don't deny that that is what you were,

a strong-arm man, during these times you have been asked about, do you?

Mr. Turkus: Objected to as already answered.

The Court: Objection overruled.

Q. (The Court) Were you a strong-arm man?

A. Yes, sir.

Q. And you committed assaults on a great many men, didn't you? A. What do you mean, "a great many men"?

6212

Q. (The Court) You committed many assaults? A. I did.

Q. Some of those assaults were with the use of blackjacks? A. Absolutely not.

Q. Did you ever use any weapons in any of these assaults you committed? A. No, sir.

Q. Just your hands, is that right? A. That is right.

Q. And some of the people you beat up were pretty badly hurt, weren't they? A. How bad can you be beaten up if you get beaten up with your hands?

6213

Q. Don't you know some of the people you say you beat up with your hands had to be taken to a hospital?

Mr. Turkus: I object, he never testified to that. That is not testimony.

The Court: He can say so, if it is so or not.

A. I cannot say it definitely: I did not see them go to a hospital.

6214

Paul Berger—For People—Cross

Q. Now, do you know what a schlon expert is? A. A schlon!

Q. You were that? A. I was no schlon, though.

Q. Tell the jury what it is. A. A schlon means beating.

Q. Well, a beating for what purpose? A. Scabs.

Q. Also to intimidate witnesses, wasn't it, to keep them from testifying? A. What do you mean by that?

6215

Q. Part of your job was to beat up people who were going to be witnesses against strong-arm men or against the union, isn't that right? A. No, sir.

Q. Did you ever beat up anybody under orders, as you say you did everything—to keep them away from testifying in court against you or some of your other strong-arm men?

Mr. Turkus: I object.

The Court: Yes or no

6216

A. No, sir.

Q. Didn't you intimidate witnesses against yourself on more than one occasion by beating them up? A. Absolutely no.

Q. Did you shake down Murray Weinstein for \$2,000 in 1946? A. I did not shake—do you know what shake means? Do you know what it means?

Q. I know what it means. A. Well, you tell me. I don't know what it means.

Q. Do you know what extortion means? A. Absolutely not. I did not extort.

Q. Did you get \$2,000 from Murray Weinstein? A. I did, and it went to Lepke's defense. That is not extortion.

Q. Didn't you demand that Murray Weinstein give you \$2,000? A. I did not.

Q. Did you get \$2,000 from him? A. I did.

Q. Didn't you threaten him that something was going to happen if he did not pay? A. Absolutely not. I will tell you what I told him.

Q. You just answer my question. A. Now that you asked me I will tell you what I told him.

6218

Q. I don't want to hear anything further. You said you did not shake down Murray Weinstein for \$2,000. A. Absolutely not. I got the money and it went to Lepke's defense in the flour racket.

Q. You got it? A. Yes, sir, and I will tell you who I turned it over to.

Q. Oh, stop. A. Mendy told me to give it to Shimmy, and I gave it to Shimmy.

Mr. Talley: Are you going to allow this witness to take possession of this court-room?

6219

The Court: Are you asking the Court a question for the purpose of entertaining the jury? I don't think your question is in order.

Mr. Talley: I ask you with all the vehemence I have at my command whether you are going to permit this witness to refuse to answer questions and shout at counsel.

The Court: The Court rules your ques-

6220

Paul Berger—For People—Cross

tion is impertinent. The Court can run its business and demands respect. The Court has had no opportunity to inject itself into this colloquy between you and the witness. The Court is not going to shout you both down. When you are through with this show you are putting on just now, the Court will have a chance to say something, if permitted.

6221

Mr. Talley: I object to your Honor's statement and I take an exception. I am not putting on any show. I am trying to cross-examine in accordance with the rules of law with which I assume your Honor is and should be familiar, that govern cross examination of witnesses of this kind. It has not been my experience that any judge will permit a witness to go through such a performance as this man has been allowed to go through.

-6222

The Court: The Court will request you sit down and behave yourself until the Court has a chance to speak. You have tried to put the Court in a false light on the record, contingent for somebody else to read, but you are not going to get away with it.

Mr. Talley: I take an exception. That is my only resort.

The Court: Now I know what you are up to.

Mr. Talley: I take an exception to that; I am up to nothing except to represent a client.

The Court: The Court demands you sit down at once.

Mr. Talley: Yes, of course

The Court: And hold your tongue.

Mr. Talley: I except to your admonition.

The Court: Now, Mr. Witness, this is my first opportunity to address you. You are required to answer questions and not inject. Do not quarrel with counsel. Proceed.

Mr. Barshay: I move to strike out the witness's answer with respect to the defendant Buchalter,—the statement that the \$2,000 he got was for a specific purpose.

6224

Mr. Turkus: He was asked whether he extorted money, and he denied any extortion.

The Court: The Court strikes out the purpose of it, as unresponsive. This is the first opportunity the Court has had to do so because this has been just a rabble between counsel and the witness.

Mr. Talley: I take an exception.

Mr. Barshay: Will your Honor give me a general exception to the line of inquiry as not binding on the defendant Buchalter?

6225

The Court: Yes.

By Mr. Talley:

Q. You never had any quarrel with Rosen, did you? A. Absolutely not.

Q. In fact, you were rather friendly with him, weren't you? A. Well, we were not very intimate, but we had no quarrel. I knew him the same as any other person.

6226

Paul Berger—For People—Cross

Q. You were friendly? A. Yes, sir.

Q. He never did anything to hurt or injure you? A. He never did.

Q. You were friendly with Rubin, too, weren't you? A. Certainly was.

Q. You never had any quarrel with him either? A. No, sir.

Q. As a matter of fact, on one occasion he loaned you \$200, didn't he? A. Yes, sir.

6227

Q. Yet you pointed out Rosen, you say, when you knew that something was going to happen to him, and you pointed out Rubin, when you knew he was to be killed; is that true? A. As far as Rubin is concerned, but not true as far as Rosen was concerned. I never knew that man was going to be killed.

Q. Is your answer predicated upon the fact that Rosen is dead and Rubin is alive, that you admit you knew Rubin was going to be killed? A. Absolutely not. I never pointed out anybody, only except Rosen. I thought he was going to be schlommed or something.

6228

Q. You thought Rosen was going to be Schlommed? A. Yes, sir.

Q. What does that mean? A. Beaten up.

Q. You were willing to point him out because you thought he was going to be beaten up or schlommed? A. I know what would happen to me if I was not willing to agree to that.

Mr. Talley: I move to strike out the latter part of the answer.

The Court: Motion granted.

Q. Now, schlomming, as you call it, means striking somebody with a lead pipe, doesn't it?

A. Not necessarily. It don't necessarily mean it has to be a lead pipe. Schlomming can be with the hand.

Q. But usually it is applied to assault with a lead pipe, isn't it? A. Absolutely not.

Q. Do you use that expression when a man is to be assaulted without a weapon? A. Either way, certainly.

Q. But generally, isn't it your knowledge that, when you use the term "schlom" it means hitting a man with a lead pipe? A. Absolutely not.

6230

Q. Isn't that what you thought was going to happen to Rosen? A. No, sir, I thought he was going to get a deal.

Q. What does that mean? A. A deal means to get hit, the same thing as schlomming.

Q. With or without a weapon? A. Yes, sir.

By the Court:

Q. What language is the word "schlom" in—is that Yiddish? A. It is more or less of a Yiddish expression.

6231

Q. The German is "schlag." What is the Yiddish for "schlag"? A. I know what the word "schlom" means definitely.

Q. Is "schlag" also Yiddish? A. "Schlug."

Q. "Schlom" is not Yiddish, but I take it it is New York slang? A. A certain amount of slang in it.

Q. It is plain slang? A. Yes, sir.

By Mr. Talley:

Q. It means hitting somebody with a blunt instrument? A. No, sir, it does not.

6232

Paul Berger—For People—Cross

Mr. Turkus: I object. We have gone over the definition several times.

Mr. Talley: You qualify this man as an expert.

The Court: Sustained as repetitious.

Q. How tall are you, Berger? A. About 5 foot 7½.

Q. How tall is Mendy Weiss? A. I would say about 6 feet.

6233

Q. How heavy are you or were you when you pointed out Rosen for this schlom you thought he was going to get; how much did you weigh? A. Well, about 155 or 160.

Q. Is that what you are now? A. No, sir, I weigh more now. Of course, I am older now; sure, we get more weight after the age of 40.

Q. You gained more weight since you have been living at the Hotel Bossert, haven't you? A. Maybe I did; I did not weigh myself.

Q. How was Weiss with regard to weight; about the same as he is now? He was just as heavy, wasn't he?

6234

Mr. Turkus: I object unless the time is fixed.

A. Yes.

Mr. Turkus: I move to strike out the answer unless the time is fixed.

The Court: I don't see what it has to do with it anyway.

Q. In 1936 was Weiss about the same height

and weight he is now? A. I cannot say that definitely.

Q. What is your impression? A. I cannot definitely say.

Q. I again ask you your best impression; he was a big, husky, heavy man, wasn't he? A. He was, yes.

Q. Would you say about 200 pounds? A. I would.

Q. So we have him about 6 feet tall and about 200 pounds, in 1936, is that right? A. Yes, sir, that is right.

Q. Now, you testified that you got money to give to Rubin, didn't you? A. I did.

Q. Did you give him that money you got for him? A. I did.

Q. You didn't hold on to any of that for yourself? A. Absolutely not.

Q. How many weeks did you give him money? A. Quite some time.

Q. What does that amount to in weeks, 10 weeks, 30 weeks? A. Months, I gave him money, quite a number of months.

Q. How many months would you say? A. Between eight and nine months.

Q. How did you give it to him, in what manner? A. I gave it to him personally.

Q. Where was he during the time you were collecting money for him? A. At times he was away, and I kept the money until I seen him.

Q. Did you keep the money when he was in Salt Lake City? A. I did.

Q. You gave him that money at the rate of \$50 a week, is that right? A. That is right.

6238

Paul Berger—For People—Cross

Q. For the entire period he was in Salt Lake City? A. That is right.

Q. How much money did you give him when he came back from Salt Lake City? A. I don't remember that definitely. I do know I was getting \$50 a week for him from Murray Weinstein.

Q. What is your best recollection as to how much you gave Rubin when he came back from Salt Lake City? A. I could not say definitely.

6239

Q. I am asking you for your best recollection, not definitely. A. Maybe three weeks, maybe four weeks, maybe less, I don't remember definitely.

Q. Is that as long as you say he was in Salt Lake City, three or four weeks?

Mr. Turkus: I object. That is something he cannot say, how long somebody else was in some other place.

6240

Q. (The Court) How long was he away, if you recall? A. I don't recall definitely, but the best of my recollection would be between three and four weeks.

Q. So when he came back you handed him \$150 or \$200? A. Whatever it was; maybe it was a little less; maybe he was short the last time and I gave him less. It was at the rate of \$50 a week.

Q. It was approximately that if he was away three or four weeks? A. Yes, sir.

Q. Where would you hand him that particular money? A. At the Hotel Hatfield.

Q. Is that a hotel in the Borough of Man-

hattan? A. Yes, sir, 29th Street and 4th Avenue.

Q. Was anybody with you when you handed Rubin that money? A. I don't remember definitely.

Q. What is your best recollection, indefinitely, generally?

Mr. Turkus: I object to the sarcastic form of the question.

Mr. Talley: Nothing sarcastic about that; he has been using the term "indefinitely" for the past few days. Now we are going to try to get something different.

6242

Mr. Turkus: May we have objections without any interpolations from Judge Talley?

The Court: Are you all through?

Mr. Turkus: I have stated my objection.

The Court: Objection sustained.

Mr. Talley: Exception.

6243

Q. Did you give him money for the time you say he was in New Orleans? A. Yes, sir, I kept the money for him.

Q. How much money did you give him after he returned from that visit? A. I don't remember that.

Q. What is your best recollection? A. A number of weeks.

Q. Do you remember how much money you gave him when he came back? A. I was giving him at the rate of \$50 a week.

6244

Paul Berger—For People—Cross

Q. Was it more than \$250 you gave him?

Mr. Turkus: Objected to as speculative.

A. I do not remember definitely.

Q. Where did you give it to him? A. I gave it to him when I took him down to the hotel.

Q. The Hotel Hatfield? A. No, no.

6245

Q. What hotel? A. Either the Lexington or to the Shelton.

Q. You don't remember which? A. I don't remember definitely.

Q. Did you give him any money after his return from any other trips than those two? A. I did.

Q. How much did you give him on any other occasion other than his return from New Orleans and after his return from Salt Lake City—on what other occasion did you? A. If you will ask me the question I will tell you, because there was a time—

6246

Q. I am asking you now, never mind about the time. A. There was a time when Lepke told me not to give him the money, but to give him the money.

Q. Let me know the time—

Mr. Talley: I move to strike out the last answer as not responsive.

The Court: Motion denied to strike out.

Mr. Talley: Exception.

Mr. Climenko: If your Honor please, on behalf of the defendant Buchalter, we

Paul Berger—For People—Cross

6247

move that that be stricken out as prejudicial.

The Court: Motion denied.

Mr. Climenko: Exception.

I also move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Climenko: Exception.

Q. Did you give him money on any other occasions than after he returned from Salt Lake City and after he returned from New Orleans?

6248

Mr. Turkus: I object unless the time is fixed.

The Court: Objection sustained.

Mr. Talley: Exception.

The Court: All you have to do is to fix the time reasonably, because otherwise the question is too general.

Mr. Talley: I am fixing the time as any other time than the time he returned from these two places.

The Court: That is too general. You may answer yes or no to that question.

6249

The Witness: Yes.

Q. What money did you give him?

Mr. Turkus: I object unless the time is fixed.

By the Court:

Q. When was it you paid him other money?

6250

Paul Berger—For People—Cross

The Court: The witness hesitates a long time. Make it more specific.

Mr. Talley: At this point I am not able to make it more specific. He said he got \$50 a week to pay Rubin when he came back from certain trips. I am asking him the amount which he paid.

6251

The Witness: I will answer that: After he came back when he was away with Benny Levine, at that time I had to give the money to Lep. When he came back from there Lep told me he would get in touch with me. Lep told me I should give him the money.

By Mr. Talley:

Q. How much did you give him? A. I did not owe him anything the; then I started to give him money because of that money I was giving to Lep.

6252

Q. I am asking you about the money you gave to Rubin. Did you give him money after you paid him this time in New Orleans, and after his return from Salt Lake City, was there any other time? A. Yes, sir.

Q. I am asking you when. A. When he came back to the city that time when he was living on Flatbush Avenue.

Q. Did you pay him any money for any time he was out of New York other than once you told us about in New Orleans and Salt Lake City?

Mr. Turkus: I object. That is confusing.

The Court: Objection overruled.

By the Court:

Q. When he was away in any other city than New Orleans or Salt Lake City, did you send any money to him? A. I never sent any money to him.

By Mr. Talley:

Q. Did you pay him any money after he had been away on any of these trips? A. I did. The only time I did not hold money for him was the time he was away with Benny Levine, and Lep told me to give him the money. After that I was giving him the money direct.

6254

Q. Giving who? A. Rubin, whenever he was here.

Q. You never sent any money to him, did you? A. Not to my recollection.

Q. Now I want you to go to Friday, September 11— Question withdrawn.

Q. You knew Rubin in 1936, didn't you? A. Certainly.

6255

Q. And you knew him in 1937? A. Yes.

Q. And you knew him in 1935? A. Yes.

Q. Did Rubin wear glasses in any of those years? A. The first time I seen Rubin with glasses is the time I met him on Nostrand and Eastern Parkway.

Q. When you said he was in disguise? A. Yes, sir.

Q. You say you never saw Rubin wear glasses before that time? A. Not to my knowledge.

Q. Are you sure? A. I am sure I never saw him with glasses before.

6256

Paul Berger—For People—Cross

Q. Did you know Rubin's brother-in-law? A. Will you please tell me his name?

Q. Don't you know anybody you knew as a brother-in-law of Rubin?

Mr. Turkus: I object unless he directs his attention to a name.

The Court: Objection overruled.

A. I do not.

6257

Q. How did you know him? A. I knew of one. Maybe he has a few more.

Q. The one you know is the one I am asking you about. A. What is his name?

Q. I asked you if you know a brother-in-law of Rubin's, and your answer now is yes? A. I know one. He may have a number of others.

Q. What is the name of the one you know? A. I don't know.

Q. Did you know Rubin's brother-in-law when you got any mail for Rubin? A. Not as I know of.

6258

Q. Do you know if he got any mail from Rubin? A. Do you mean the one who is working in the Association?

Q. The one in the Expressmens Union; did he get any money from Rubin while Rubin was away? A. I cannot say that; I don't know anything about it.

Q. What time do you say you saw the defendant Weiss on Friday, September 11th, the first time that day? A. When I came down there with Lepke.

Mr. Talley: I move to strike it out.

The Court: Strike it out.

Q. Answer the question, please. A. The first time I seen him was when I was standing with Lepke, I saw him coming over toward us.

Mr. Talley: I move to strike it out as unresponsive.

The Court: Do you want the time of day?

Mr. Talley: Yes.

By the Court:

6260

Q. Do you remember the time of day, if you know? A. The best of my recollection would be about 5:30 or 6.

Q. That is based upon an impression or looking at a watch? A. On impression; I did not look at any watch.

By Mr. Talley:

Q. But you are pretty sure that is about the time, aren't you?

6261

Mr. Turkus: I object; he said it was his impression.

The Court: Objection sustained.

Q. Is it your best recollection as to time? A. Around that.

Mr. Turkus: I object to it as already having been answered.

The Court: He said "impression." Objection sustained.

Gentlemen of the jury, please remem-

6262

Paul Berger—For People—Cross

ber the previous admonition given you and particularly the one regarding segregation and housing. Let no one talk to you about the case; do not listen to radios or read anything in the newspaper. Keep your minds open.

Recognizing what Armistice Day means in the public mind today, the Court would be misunderstood if it sat tomorrow. I think it is up to us to give that day the due respect that everybody else gives to it. We will make up for the lost time in other ways this week. At the present time we will recess until 10 o'clock Wednesday morning.

First the witness may leave.

Now the jury may go out the other door.

The defendants are remanded.

Mr. Barshay: (After the jury leaves, but before the defendants are remanded) I find it necessary to ask the District Attorney to produce for the Court's inspection a statement made by the witness Rubin to former Assistant District Attorney McCarthy. It is marked for identification.

The Court: You have the "Q. & A." in that statement?

Mr. Turkus: I have the "Q. & A." that McCarthy took.

The Court: I will read it. Send it to my chambers.

The defendants are remanded.

(Whereupon an adjournment was taken until Wednesday, November 12, 1941, at 10:00 A. M.)

6263

6264

Paul Berger—For People—Cross

6265

Brooklyn, N. Y., November 12, 1941

TRIAL RESUMED

PAUL BERGER, a witness on behalf of The People, resumed the stand and testified further as follows:

The Court: Mr. Witness, we are now starting this session. You are going to be subject to cross-examination for probably the day. Now, please bear in mind that the Court requires order. Questions must be asked civilly and answers must be given civilly, and to the point. Bear in mind that this is not a picket line. This is a court of law, and the atmosphere must be kept as dignified as the tradition of the Court entitles it to. Volunteer nothing. Just answer the questions frankly and honestly, and treat counsel with civility. No more demonstrations.

6266

Proceed, Judge Talley.

6267

Cross-examination by Mr. Talley (continued):

Q. When did you register as an alien? A. At the time when Judge O'Dwyer was questioning me.

Q. That was in May of this present year? A. No, sir, it was sometime in June.

Q. In June of 1941? A. That is right.

Q. You only registered at the direction of the District Attorney, isn't that right?

Mr. Turkus: I object to the question.
The Court: Objection sustained.

6268

Paul Berger—For People—Cross

Q. You registered at the direction and request of the District Attorney, isn't that right?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Who prepared your registration as an alien?

6269

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Did you answer all the questions that were required to be answered in the registration? A. I did.

Q. Did you answer them truthfully? A. I answered them truthfully to Judge O'Dwyer; that is how he came to know I should be registered.

6270

Q. Then it was at Judge O'Dwyer's request that you did register?

Mr. Turkus: I object. That is the second time the Court's ruling has been violated.

The Court: Objection sustained.

Mr. Talley: This witness has just opened the door. I say my question is the only way to make it comprehensive for the jury.

The Court: Proceed.

Mr. Talley: Exception.

Q. My question is, did you answer all of the questions truthfully *and completely*?

Mr. Turkus: I object. That has just been answered.

The Court: He has not answered that. Answer yes or no.

A. Yes, sir.

Q. Did you state in the application the various names or aliases that you had used for the last ten or fifteen years? A. Yes, sir.

6272

Q. You put them all down, did you? A. Yes, sir, it is of my remembrance.

Q. You have a pretty good memory, haven't you?

Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Q. You have a good memory, have you not?

The Court: A man is sometimes afraid of his own memory.

6273

Q. You have remembered the names of the streets exactly in the last ten instances in which you met people and had various conversations, as long ago as 1936, haven't you?

Mr. Turkus: I object to the form of the question.

The Court: Objection sustained.

Mr. Talley: Exception.

6274

Paul Berger—For People—Cross

Q. Did you notify the Government when you registered as an alien that you had used the name of Samuel Gold, in 1927?

Mr. Turkus: Objected to as already covered.

The Court: You can say yes or no. Do you remember?

The Witness: Every name I will explain.

6275

Q. I don't want you to explain. I want you to tell me if, when you registered as an alien citizen in 1941, in June or thereabouts, when you were talking to the District Attorney of this county, did you tell the Government that you had used the name of Samuel Gold? A. For your information—

Q. Tell me, yes or no? A. I have to answer that question so you will know what it is all about. I will tell you what it is. When I was registered, my record was taken off the Police Department, and every name was put in there; if you want to know something, that is an answer.

6276

By the Court:

Q. Counsel wants to know if at that time you remember particularly whether or not you put "Samuel Gold" on the return. Do you remember? A. Yes, sir, my record was given from the Police Department.

Q. Are you assuming that "Gold" was there, or is that a matter of recollection? A. I am positive "Gold" was there, because that is one of the names I used when I was arrested.

By Mr. Talley:

Q. Did you tell the Government in that statement which you filed that in 1926 you used the name of Henry Weinstein?

The Court: Do you remember?

Mr. Turkus: I object, it is cumulative. He stated he gave every name that he has with the police.

The Court: It is not clear whether he remembers or whether he is only assuming because of the police record.

6278

The Witness: If it was on the police record I used it and it was put in there.

By Mr. Talley:

Q. What is your independent recollection, whether you put that in or not? A. Because he was handed the yellow sheet, and he took all the names off the sheet.

Q. Who did?

6279

Mr. Turkus: I object. That does not make any difference.

Mr. Talley: It does make a lot of difference for the purpose of my examination.

By the Court:

Q. Who filled it out? A. A man from the Federal—he was from the Immigration Department, or whatever it is.

Q. You did not fill out the form? A. No, sir,

6280

Paul Berger—For People—Cross

I signed it; I know he was handed that yellow sheet. Definitely I saw he got that yellow sheet and he copied the whole thing.

Q. You are only assuming that those names were accurately recorded by the man who filled it in?

6281

Mr. Talley: I take an exception. I object to your Honor's question as an interference with my cross-examination of this witness.

Q. (continuing)—filled in the form, but you are not stating according to your recollection; is that it?

Mr. Talley: Objected to as leading and suggesting to the witness.

The Court: Objection overruled.

Mr. Talley: Exception.

6282

A. That is right, and he was also kidding me about all the names I was using.

By Mr. Talley:

Q. Kidding, he kidded you about it? A. Yes, sir.

Q. He kidded—what did he say about all the names?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Now, my question, which is not answered: Did you tell the Government when you filed this statement, your registration as an alien, that you had been known as or used the name of Henry Weinstein, in 1928?

Mr. Turkus: I object. The witness has made a comprehensive answer.

The Court: Sustained, as answered.

Mr. Talley: Exception.

Q. Did you tell the Government in your certificate of registration that you had used the name of Paul Goldstein, in 1928?

Mr. Turkus: I object for the same reason.

By the Court:

Q. Do you actually remember that? A. To the best of my recollection—

Q. No, not the "best", we don't know whether the best is good or not. Do you actually remember whether you did or not? A. Whether I used that name?

Q. Whether that was filled in on the form. Did you see it on the form? A. I did not see it on the form, but the only time I used aliases was when I was arrested. Before that I never used aliases.

Q. Did you read the form before you signed it? A. No, sir.

By Mr. Talley:

Q. Are you telling us that you made this

6286

Paul Berger—For People—Cross

declaration to the Government and signed it without reading it? A. I presume everything was copied off.

Q. My question is: Do you say you signed that registration statement without reading it?

The Court: Yes or no.

Mr. Turkus: I object. He does not have to read it if it is read to him.

The Court: Answer yes or no to that.

6287

A. I read some of it.

Q. You mean you did not read all? A. No, sir.

Q. Did you swear to it? A. I did.

Q. In this instance you swore to something and you did not know whether it was correct or not—is that true?

Mr. Turkus: Objected to.

The Court: Sustained as argumentative.

Mr. Talley: Exception.

6288

Q. Did you tell the Government when you made that form that you used the name of Joseph Cohen, in 1929?

Mr. Turkus: I object. The witness has given a comprehensive statement as to these names that appeared.

Mr. Talley: The witness has not given any.

Mr. Turkus: I am addressing the Court.

Mr. Talley: So am I.

Paul Berger—For People—Cross

6289

The Court: Objection sustained.

Mr. Talley: Exception.

Q. What part of this application or declaration of being an alien did you read?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Now, did you tell the Government in that declaration that in 1932 you used the name Joseph Schwartz?

6290

Mr. Turkus: I make the same objection.

The Court: The same ruling.

Mr. Talley: Exception.

Q. Did you set out in your declaration of being an alien the different crimes you had committed at various times? A. That is right. I answered that question before.

6291

Q. Answer it again. A. I told you before there was a sheet given to that man and he took everything down, and that settled it. I answered that question before.

Q. That sheet you speak of was your police record? A. No convictions, for your information.

The Court: Are you talking about fingerprint sheets?

The Witness: Yes.

The Court: Police Department record?

6292

Paul Berger—For People—Cross

The Witness: Yes, sir. You never asked me if I was convicted of any crime. Why don't you ask me that?

Mr. Talley: You will be asked plenty of questions.

The Witness: Yes, that particular question you would not ask me: Was I ever convicted.

Mr. Talley: Did you hear the Court's direction to you before we opened here?

6293

The Court: Just answer the question.

By Mr. Talley:

Q. You committed other crimes than those set out in this yellow sheet you speak about? A. No, sir. That was no crime, either. When you talk about the yellow sheet, those were arrests. No crimes there.

The Court: No convictions?

The Witness: No.

6294

Q. Each time you were arrested as shown on this long yellow sheet known as the police record, you were arrested actually for crimes you did not commit?

Mr. Turkus: I object. Arrests are not competent for cross-examination.

The Court: Objection sustained.

Mr. Talley: Am I required to allow this witness to answer these questions without following him up? This is cross-examination.

Paul Berger—For People—Cross

6295

The Court: The Court is glad to be enlightened.

Mr. Talley: Does your Honor not permit me an answer to that question?

The Court: The Court is not a witness. Please abide by the ruling.

Mr. Talley: Exception.

Q. Do you say that the statement you filed, the sheet as to being an alien, was true in every respect?

6296

Mr. Turkus: Objected to.

The Court: Objection sustained as already answered.

Mr. Talley: Exception.

Q. When you were in the Middletown State Insane Asylum— A. (interrupting) What do you mean, I was in it? I was never in it.

Q. You told us you were working there. A. I worked there. When you say "in" that means I was an inmate.

Q. Didn't you go there as an inmate and a patient? A. I will ask you the same question: Did you ever go there as an inmate? That answers the question. Did you?

6297

Q. If I had listened to you very much longer, I might. A. The question you asked me—

Mr. Turkus: This is no time for a confession by Mr. Talley. I object to it.

The Court: Come to order.

By the Court:

Q. Were you ever committed there as an in-

6298

Rauli Berger—For People—Cross

sane patient? A. Absolutely not. That is ridiculous.

By Mr. Talley:

6299

Q. When you got there weren't you given the job of being an orderly? Isn't that what happened? A. Absolutely not. I went for the job. I worked there. I got paid for it. Look that up if you want to. Why don't you look it up? I worked there, I got paid for it, and I was there two weeks. You would not go to the trouble of looking it up, would you, if I was not? That is a ridiculous question.

The Court: Strike that out. Come to order, Mr. Witness.

Mr. Talley: I would like to have it in. I did not move to strike it out.

The Court: All right, leave it in.

Q. In what court was your father naturalized?

6300

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Was your father ever naturalized, to your knowledge?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. As a matter of fact, you know he never

Paul Berger—For People—Cross

6301

was made an American citizen, don't you? A.
That is not a matter of fact.

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. You don't deny that in two affidavits you made you swore that you were an American citizen—you don't deny that, do you?

6302

Mr. Turkus: I object to the form of the question.

The Court: Objection overruled.

A. What?

By the Court:

Q. You swore in two affidavits you were a citizen? A. At all times I thought I was. I probably did.

By Mr. Talley:

6303

Q. Did you or didn't you? A. What?

Q. Did you make two affidavits in which you swore you were a citizen of the United States?

A. If I—, I probably did, thinking I was. That is right.

Q. Did you? A. (Witness remains mute.)

By the Court:

Q. Do you remember whether you did or not?

6304

Paul Berger—For People—Cross

A. I said I was always under the impression I was a citizen, then it was that way—

Q. Do you remember whether you ever swore to two affidavits which stated you were a citizen? Do you remember—yes or no? A. Can I have an explanation of what he means?

Q. Do you remember swearing to these affidavits? A. Out and out affidavits, where I said I was!

Q. Yes. A. I don't remember.

6305

By Mr. Talley.

Q. Did you make an affidavit dated the 16th of August, 1937, when you were seeking a reduction in your bail from \$35,000, in the Borough of Manhattan, County of New York? A. I did.

Q. And in that affidavit did you say as follows: "That your petitioner"—meaning you—"is a citizen of the United States and has never been convicted of any crime"? Did you say that?

6306

Mr. Turkus: That does not affect his credibility under the circumstances stated by the witness, who was under the belief of citizenship.

Mr. Talley: Supposing we leave that to the jury.

The Court: Objection overruled.

A. I did.

Q. In an affidavit dated April 28, 1939, in a proceeding in the Appellate Division, Borough of Manhattan, County of New York, where you were seeking to reduce your bail from \$100,000, did you make an affidavit in which you swore as

follows: "That your petitioner"—meaning you—"is a citizen of the United States and has never been convicted of any crime"? A. I did. At that time, I explained, I thought I was a citizen.

Q. The answer is you did? A. Yes, sir, I did. I explained that to you a number of times. I thought I was.

Q. Now, you assaulted a man named Brucillo, didn't you, who came into your shop? A. I answered that question to you, if I am not mistaken, on Monday.

6308

Q. You did not answer it to my question, did you? Have you any real, unanswerable objection to answering it again?

Mr. Turkus: I object to it as argumentative.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. I ask you now to answer that question. I ask you if you did not assault a 19-year-old Italian boy named Brucillo in your shop.

6309

The Court: Isn't that the same question?

Mr. Talley: Mr. Barshay questioned him about that; I did not.

The Court: I don't recall. I thought Mr. Barshay said 50 years old.

Mr. Barshay: I said 19 years old.

The Court: Objection overruled.

A. I did.

Q. You did not have anybody to help you in

6310

Paul Berger—For People—Cross

that assault, did you? You did that all alone, didn't you?

Mr. Turkus: I object. The witness has stated what occurred. I object to the form of the question.

The Court: Objection sustained.

Mr. Talley: Exception.

6311

Q. Was anybody in the shop with you when you assaulted this young man? A. That was right in front of the office.

Q. Do you mean on the street or in the hallway? A. In my place of business, right near the office. He was on the premises, on the floor; he came in and opened the door like a burglar.

Q. Was anybody else in the office with you at the time you assaulted him? A. There was.

Q. How many?

6312

Mr. Turkus: I object to the form of the question. Under the circumstances, that was a legal assault.

The Court: Sustained, but not on that ground.

Mr. Talley: It is an illegal assault.

Q. Now, you assaulted him, you said, because he said to you, "All you Jews are alike," is that correct? A. No, sir. That is one of the things that was said. You are not asking me how he came walking in and how he acted and what I called him.

Q. Didn't you tell us on Monday when he said to you, "All you Jews are alike," then you assaulted him?

Mr. Turkus: I object. That is not the testimony.

Mr. Talley: That is the testimony.

Mr. Turkus: That is only a portion of it which he seeks to inject into the record for reasons best known to himself.

The Court: It is a collateral issue. Details of a collateral issue cannot be tried out on the main issue here as collateral impeachment. You have his admission of committing an assault. That is as far as you can go.

6314

Mr. Talley: I have a right, I submit, to go into the character and circumstances surrounding that assault.

The Court: You may do that, but you may not go into the question of witnesses.

Mr. Talley: I understand I cannot try a collateral issue and I am bound by this witness's answer, but I am certainly entitled to his answer.

The Court: Bear that in mind.

Mr. Talley: Now I ask that I may have an answer to my question, and I take an exception.

6315

Q. You assaulted him because you believed that his statement to you was an insult to your race, isn't that so? A. That is one of the reasons. The other reason is he refused to get out.

Q. What is the other reason? A. He refused to get out. He came walking in like a burglar and I spotted him from the office, and I walked out and I said, "What do you want?" He said,

6316

Paul Berger—For People—Cross

"I am looking for a job." I said, "I am sorry, I cannot do anything for you." He said, "All Jews are alike." I said, "Get out," and he started shoving me.

Q. You don't mean that, do you? A. I certainly do.

Q. A man comes in looking for a job in your place and because you told him you didn't have any work he started shoving you around? A. I explained how it happened.

6317

Q. Is that right? A. Definitely so, yes, sir.

Q. Now, you learned afterwards that that boy had not eaten for two days, didn't you?

Mr. Turkus: I object. That would be hearsay.

The Court: I thought Mr. Barshay said 12 days.

Mr. Barshay: Two days, I said.

The Court: How would he know? Objection sustained.

6318

Q. Didn't the boy tell you that?

Mr. Turkus: I object; he said in answer to Mr. Barshay's question that when the boy told him he had not eaten for some days, he fed him. Do you wish to go over the same ground.

Q. Did you testify you fed this boy after you assaulted him? A. That is right.

Q. You know the boy was taken to a doctor by your partner? A. That is right.

Q. You know he had six stitches taken in his head from the blow you gave him? A. Not as

I know of. Absolutely not. How am I to know that? I was not there with the doctor.

Q. You hit him, didn't you?

Mr. Turkus: Objected to. That has been answered. We have been over that.

The Court: He said the boy went down—stairs—fell down on being struck, but it does not appear by the record whether there was any laceration by reason of a blow—whether the laceration occurred in the fall.

6320

Mr. Talley: That is why I am inquiring into it.

The Court: If you wish to go that far you are entitled to do so.

Q. When you struck this boy, did you see him bleed? A. Yes, sir.

Q. Where was he bleeding from? A. Right here (indicating).

Q. From his lip? A. Yes, sir.

Q. Do you know your partner took him to a doctor? A. He was there.

6321

Q. Do you know he took him to a doctor? A. Yes, sir, we went over to the doctor with him—not my partner—one of the men working.

Q. You say you thought this boy was going to commit a burglary when he came into your place?

Mr. Turkus: I object to that as too far afield.

The Court: Sustained. You cannot go any further on that. It is purely collateral.

6322

Paul Berger—For People—Cross

Q. The real reason you hit him was because he said, "All you Jews are alike"?

Mr. Turkus: I object to that, trying to inject such an issue in this case—

The Court: Objection sustained.

Mr. Talley: Exception.

Q. You knew that Rosen was a Jew, didn't you?

6323

Mr. Turkus: I object. We are in the United States of America.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. And you knew Rubin was a Jew, didn't you?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Turkus: Will your Honor now admonish counsel that we are trying this case in Kings County?

6324

Mr. Talley: God knows I know you are trying it in Kings County—I know you are trying it in Kings County—bringing out witnesses of this type and those you have had.

Mr. Turkus: I did not bring them; your client associated with them. I am forced to prove their association.

The Court: Cannot this be stopped?

Mr. Turkus: I resent the implication.

The Court: Let us stop resenting, let us get to work. They don't do these

things in New York County; that is settled.

Mr. Talley: May I have an answer?

Mr. Turkus: I object to it.

The Court: The objection was sustained.

Mr. Talley: Exception.

Q. You did not hesitate to point out men who were Jews whom you knew were going to be assaulted or killed, did you?

6326

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. You did not hesitate to extort hundreds of thousands of dollars from business men who were Jews, did you?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Talley: Exception.

6327

Q. You were always a good union man, weren't you? A. To a certain extent.

Q. You worked for the union? A. I answered that question, "to a certain extent."

Q. Answer it again, if you did. A. To a certain extent. I did until I found out who they really were.

Q. How long did it take you to find that out? A. When I started working for them.

Q. When was that? A. 1927, 1928, 1926.

Q. You worked for them in 1927? A. Yes, sir.

Q. And in 1928? A. Yes.

6328

Paul Berger—For People—Cross

Q. And in 1929? A. Yes.

Q. And in 1930? A. On and off.

Q. Right up to 1941, didn't you? A. I said on and off.

Q. Did it take you all that time to find out, as you say, what they were? A. I said it.

Q. You beat up scabs, didn't you? A. I did.

Q. And you beat up non-union men? A. I did.

Q. That was as early as 1925 and 1926, wasn't it? A. If it is so, then it is.

6329

Q. Don't you know? A. Well, it was.

Q. You went right on from 1925 right through to 1935 and up to 1940 or 1941 doing that kind of work? A. That was not the only kind of work—I was working as a cutter, if you please.

Q. While you were working as a cutter, you were also working as a picket and as a strong-arm man for the union? A. Now and then, when there was a strike.

Q. When there was a strike on you were called on as a strong-arm man, weren't you? A. One of them. There were a hundred others. I was a member of that union.

6330

Q. You began doing strong-arm work back as far as 1921, didn't you? A. I am not definitely positive about that.

Q. Are you reasonably sure of it? A. Almost sure.

Q. You continued from 1921 to 1922, 1923, 1924? A. Continued what?

Q. As a slugger and a strong-arm man, beating up non-union men. A. Them years I was working in a factory, if you please.

Q. Weren't you working as a strong-arm man

for the union before 1926, as you told us? A. Absolutely not.

Q. Didn't you tell Mr. Barshay you were working as a strong-arm man and committing assaults in 1925, at the time of the general strike? A. That is right, but not in 1921.

Q. You were working in 1925, weren't you? A. '25 or '26, around that time.

Q. How about 1924? A. I was working around there as a picket.

Q. And as a slugger? A. I would not say at that time.

Q. Weren't you? A. I would not say at that time; I answered you.

Q. How about 1923, weren't you acting as a slugger and a strong-arm man then for the union? A. I was a picket.

Q. Did you assault people who were going to work or coming from work in non-union shops? A. Not as far as I can remember.

Q. How about 1923? A. Not as far as I can remember.

Q. How about '22? A. Not as far as I can remember; I was a picket.

Q. Do you say you started out as a slugger and a strong-arm man in the spring of 1925? A. Around that time.

Q. It could have been before? A. I said around that time.

Q. Do you mean by that it might have been before 1925?

Mr. Turkus: I think we are splitting hairs.

Mr. Talley: I am cross-examining him.

The Court: Objection overruled.

6334

Paul Berger—For People—Cross

A. Maybe it was. If it is so, I will tell you. I have nothing to hide—nothing I am trying to hide. I am telling you the truth. If it is so, it is so. I am telling you the truth. I am telling you it was. If it was around 1923 or 1924 then I worked like that.

Q. Suppose you begin to tell us the truth from now on. A. I have been telling you it all the time.

Q. Is it not a fact that in 1921—

6335

Mr. Turkus: (interrupting) Mr. Talley has heard your Honor admonish the witness. Now he invites repartee by this kind of bantering remarks back and forth with the witness, such as "Supposing you start to tell us the truth now." That invites an answer like we are just getting from the witness. I will ask your Honor to advise him again.

6336

The Court: The court is ready to admonish the witness as often as necessary. The only thing the Court objects to is this, and I do not want it to occur again: That when the Court is unable to admonish because it cannot get a word in edgewise and the situation becomes somewhat out of hand, that the Court should be blamed for it. I came here this morning expecting, and I still believe, to have an orderly day's work in court. Go ahead, Judge Talley.

Q. In 1921 you were committing assaults for the union?

Mr. Turkus: Objected to as repetitious.

By the Court:

Q. Do you remember the year? A. To the best of my recollection—

Q. Do you remember the year you began to do muscle work? A. Actual muscle work!

Q. Yes. A. I would say around between 1925 and 1926—1925 and 1926.

6338

By Mr. Talley:

Q. I am asking you if you did not do that as early as 1921. A. Not to my recollection.

Q. Didn't you do it as early as 1922?

Mr. Turkus: Objected to as repetitious. We have gone up and down the ladder in years.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Now, you were a member of the union, weren't you? A. I was also working in a factory.

6339

Q. Also working for the union, weren't you? A. That is right: not all the time, not all the time. I answered that.

Q. Yet you have been running a non-union shop at 599 Broadway, haven't you? A. I beg your pardon!

Q. (Question repeated by the reporter.) A. Absolutely not.

Q. Is that a union concern at 599 Broadway? A. That is right, 100 per cent.

6340

Paul Berger—For People—Cross

Q. Is that business at 599 Broadway known as the S.B.M. Corporation? A. That's right.

Q. What does the "S" stand for? A. Schwartz.

Q. What does the "B" stand for? A. Beeble and Berger.

Q. And what does the "M" stand for? A. Montluk.

Q. A man named Schwartz and a man named Montluk were your partners? A. That is right.

6341

Q. Are you secretary of that company? A. That is right.

Q. Did that company, on Monday last, while you were testifying in this court, before the Department of Labor, admit it was violating the law while operating on Government contracts? A. Did they?

Q. I am asking you. A. I am asking you. I want to learn something about that.

Q. You will learn a lot of things before we get through. A. This particular thing I don't know anything about.

6342

Q. You don't know, do you? A. About what?

Q. About that company being before the Federal Department of Labor? A. What happened to it?

Q. I am asking you. A. I want to know what happened. I want to know about it.

Mr. Turkus: They are having a very pleasant debate.

The Witness: He is telling me something.

Mr. Turkus: This does not go to his

credibility or affect the issue we are trying.

The Court: Do I hear an objection?

Mr. Turkus: Yes, I object.

The Court: Sustained as too far afield.

Mr. Talley: Exception.

Q. Are you president of the Berger Clothing Company at 57 Thames Street? A. I was.

Q. Are you now? A. I think I am; I am not sure. If you want to know who the real president was, I will tell you. Right here, Mendy Weiss.

6344

The Court: Stop volunteering.

Mr. Talley: I move to strike it out.

The Court: Answer the question and no more.

Q. Do you know Samuel Kaminsky? A. Yes, sir.

Q. Do you know Nathan Berger? A. Yes, sir.

Q. Is he a relative of yours? A. He is not.

Q. Were they your partners? A. They were Mendy's partners.

6345

Mr. Talley: I move to strike it out and I ask the Court to direct an answer.

The Witness: That is the truth that I am telling you. I am telling you the truth. They were Mendy's partners.

The Court: Strike it out. Say yes or no.

A. On paper I was, that is right.

6346

Paul Berger—For People—Cross

Q. You mean on a paper filed with the Secretary of State? A. That is right.

Q. You were a stockholder and officer of that corporation? A. That is right.

Q. And they were officers and stockholders? A. Yes, sir.

Q. What was your office there, president? A. I think it was.

Q. What connection was there between the Berger Clothing Company and the Promenade Clothes Company of Brooklyn? A. It was practically one.

6347

Q. On Monday last when you testified in this court, did Samuel Kaminsky and Nathan Berger plead guilty in the United States Court in Brooklyn to violating the Wage & Hour Law on this Government contract you told us you had?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Talley: This is his own corporation. He is president.

6348

The Witness: I had nothing to do with that Government contract they had, for your information.

Mr. Talley: I take an exception to your Honor's ruling.

Q. Did they plead guilty and were they given 18 months? A. For your information, I am away from that concern for over a year. You don't know what you are talking about. I am in business for myself. I am not in business with them any more.

Mr. Talley: I move to strike out the answer.

The Court: Despite the Court's ruling, counsel deliberately puts this before the jury. It was an impropriety, and it provoked the answer by the witness. Both counsel and witness will come to order and proceed.

Mr. Talley: Does your Honor sustain the objection?

The Court: I surely do; apparently you were not listening. The Court is entitled to the attention of all counsel, and you had no right to turn your back to the Court and then ask the Court to repeat its ruling.

6350

Mr. Talley: I did not turn my back on this court, and I am quite confident of deporting myself properly and with respect. I assume your Honor ruled against me, and I will take an exception to your Honor's ruling.

Q. You were not prosecuted for anything in connection with the violation of the Federal law, in connection with your Government contract, were you?

6351

Mr. Turkus: I object. That is becoming reprehensible.

The Court: Objection sustained. The Court refuses to be goaded into losing its temper, but is going to be very patient.

Q. Now, you were a slugger and a strong-arm

6352

Paul Berger—For People—Cross

man for a man named Jack Noya, weren't you?

A. No, sir.

Q. Didn't you tell Mr. Barshay on Monday that you were?

Mr. Turkus: I object, that is not the testimony.

The Court: Objection sustained.

6353

Q. Did you work for a man named Jack Noya in any capacity? A. I never worked for him.

Q. Did you know him? A. I did.

Q. He was a gangster? A. Yes, sir.

Q. Did you do any work for a man known as Little Frenchy? A. For him?

Q. Yes. A. I never done any work for him. He was arrested with me.

Q. You were working with him, not for him? A. That is right.

Q. You were working with Jack Noya and not for him; is that right? A. I did not work with him.

6354

Q. Were you ever arrested with Jack Noya?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Little Frenchy was a gangster too, wasn't he? A. He was.

Q. Now, these assaults you committed you only committed with a lot of people around you; is that right.

Mr. Turkus: I object. It has been a-

ready gone over six or seven times this morning.

The Court: Objection sustained, but not upon that ground.

Mr. Talley: May I ask upon what ground your Honor sustains the objection, so I may be guided?

The Court: Upon the ground it is immaterial how many witnesses may or may not have been there. As to this assault, under the rule of collateral impeachment, that is as far as you can go. We are not trying atmosphere in connection with collateral matters.

6356

Mr. Talley: I have a right to show that this man committed assaults only when he was protected by having others around him. "Me and six others," was his expression, when they assaulted a lone man in a street car. And I have a right to go into that respecting credibility and whether this jury can properly be asked to believe anything he says.

The Court: The question you asked appears to be a question as to whether or not there were witnesses, not co-participants. You are inquiring whether or not they were co-participants in this case?

6357

Mr. Talley: I have no relation to witnesses.

The Court: Proceed.

Q. You only committed these assaults when there were people around you, in company with you? A. Repeat that.

6358

Jul Berger—For People—Cross

By the Court:

Q. In connection with others. You did not do a solo attack? Is that what counsel means? A. As a rule, yes, sir.

By Mr. Talley:

6359

Q. Did you do any job by yourself, alone, without some of your underworld friends or gangsters, like Noya, Frenchy? A. How would I know what is what? I had to have some people with me.

Q. Your answer—is you never committed any of these assaults? A. For the union?

Q. (The Court) Yes. A. That is right.

Q. How about the assaults you committed that were not for the union? Did you ever assault anybody alone for any reason not connected with the union? A. Not as I can remember.

Q. In any of these attacks you made upon people, did you kill any of them? A. Absolutely not.

6360

Q. You are sure about it? A. Positive.

Q. You did leave them stretched out unconscious, didn't you, on the sidewalk, many times? A. Did I?

Q. Who do you think we are talking to? You. A. I explained to you, at times there were four or five, sometimes a half a dozen.

By the Court:

Q. Judge Talley's question is whether or not the victims were at that time knocked out or

appeared to be knocked out. Yes or no. A. Yes and no.

Q. Both ways? A. I cannot definitely say.

By Mr. Talley:

Q. Some were knocked out and some were not knocked out? A. I said yes and no.

Q. You never used a lead pipe or a blackjack in any of these assaults, did you? A. Absolutely not.

Q. You never had any weapon at all? A. No, sir.

Q. Is that right? A. That is right.

Q. How many of these assaults do you think you committed? A. I cannot definitely say.

Q. They would run from the hundreds, wouldn't they? A. Absolutely no.

Q. Over a period of several years, would you say you did not assault hundreds of men? A. What would you call several years, if you please?

Q. I say from 1921 to approximately 1941, 20 years.

6362

6363

Mr. Turkus: I object.

The Court: Objection overruled.

A. Absolutely not.

Q. How many do you say you have assaulted and injured? A. You said 20 years. I told you I was working in the factory.

Q. How many years did you say you have at various times assaulted and injured? A. Some of them—I don't remember how many, but not what you are talking about, 1921. All those years I was working in the factory.

6364

Paul Berger—For People—Cross

Q. My question is, how many men have you assaulted during whatever period you say it was you have been acting as a slugger and strong-arm man? A. Maybe 15, maybe 20.

Q. Maybe more? A. Maybe more.

6365

Q. How many more? A. I cannot say definitely. Maybe one or two more, maybe two less. Not what you are talking about. You are ridiculous altogether. I was working. It was years I never went out. I was working in the factory. All those records can be brought here.

Q. When you were working in the factory and you were called upon by the union to do something for the union, you did it? A. There were times that years went by.

Q. Did you? A. All right, but that has nothing to do with what I am telling you now, that there were sometimes a year and a year and a half I was not called on to do any picket work. I told you there were hundreds more there. I am not the only one.

6366

Q. That is what I say, you only assaulted people when there were a hundred other people to help you? A. A hundred others were working, union men. I told you I was working as a cutter.

Q. You told me you were working for \$25 a week as a slugger. That is true, isn't it? A. I told you I was working as a cutter, and at night when there was a strike, at night and in the morning, I used to get twenty-five bucks for that. Not all the time. Only when there was a strike. There were times I was not called upon in a year or a year and a half. You are trying to impress me that I was on it for 20 years. I am a cutter, and I am a damn good cutter, one

Paul Berger—For People—Cross

6367

of the best in the business. Now, what do you think of that?

Q. In addition to being the kind of a cutter you say you were— A. (interrupting) You don't think I would be kept on all the time—I had to work.

The Court: Now please come to order. You have completely disregarded what the Court told you about behaving yourself.

Q. In addition to being a good cutter, with all the rest of it, you say, you also were a good slugger, weren't you?

6368

Mr. Turkus: I object to the form of the question.

The Court: Objection sustained.

Mr. Talley: Let him answer.

Mr. Turkus: There is only one judge here.

The Court: No outburst, please. This means nothing.

Q. You were working with the Worlds Clothing Exchange? A. I was.

6369

Q. In what year? A. I think I started for them around 1933, I would say.

Q. What part of the year 1933 did you commence working for the Worlds Trucking Company? A. What?

Q. The Worlds Clothing Company. A. For the Worlds Clothing Exchange?

Q. Yes.

6370

Paul Berger—For People—Cross

Mr. Turkus: I object. This is confusing for the record.

Mr. Talley: I withdraw the question.

Q. What part of the year 1933 did you commence to work for the Worlds Clothing Exchange? A. To the best of my recollection about the beginning of the year. I don't remember definitely. It may be so and may not.

6371

Q. Would you make it around January? A. I cannot tell you.

Mr. Turkus: Objected to as speculation.

Mr. Talley: This is not speculation; this is cross-examination. You don't seem to appreciate this province at all. May I have an answer?

By the Court:

6372

Q. Do you remember? A. I don't definitely remember.

By Mr. Talley:

Q. When you say the early part— A. There's a record there, why not look at the record? I am not denying it. I don't remember. I worked there. Sure I did. What is it you want to know?

Q. When did you begin to work there, you say? A. I think it was—I don't remember. If the records are here, all right.

Q. When you said the early part of the year, what did you mean, what month? A. I cannot

definitely say. I told you it is on record. I done work there, I told you.

Q. Cannot you definitely tell us what you mean by the early part?

Mr. Turkus: Object.

The Court: Sustained as answered already.

Mr. Talley: Exception.

Q. You did trucking for them when you went to work for them in 1933? A. Who did trucking for them?

6374

Q. You heard the question. A. Before I went to work for them?

Q. When you went to work for them, when you were working for them. A. A number of truckmen.

Q. Who were they? A. One was Louis Cooper, another one was named Larry Cooper, and maybe one other that I don't remember.

Q. Which one did you see Joseph Rosen work for? A. He worked for Louis Cooper.

6375

Q. Are you sure it was Louis and not Larry? A. He also worked for Larry Cooper.

Q. And for what other truckmen? A. For what other truckmen he worked?

Q. Did Joseph Rosen work for. You say he worked for Larry Cooper and Louis Cooper. Did he work for any other truckmen? A. I don't know.

Q. While you were connected with the Worlds Clothing Exchange? A. Not as I know of.

Q. How long were you connected with the

6376

Paul Berger—For People—Cross

Worlds Clothing Exchange? A. A couple of years.

Q. Would they be 1933 and 1934?

Mr. Turkus: Objected to as speculative.

A. I presume they would; I presume they would be '34, I presume that would be 1935.

6377

Q. Was a man named Weiss working for Larry Cooper or Louis Cooper at the time you were connected with the Worlds Clothing Exchange? A. A man named 'who?

Q. A man named Weiss. A. What Weiss?

Q. A brother of the defendant Weiss in this case. A. He was.

Q. He was working with the Worlds Clothing Exchange? A. No, sir, he was working for me. Mendy asked me to put him on to work to break him in as a cutter. He worked for me.

Q. That was for the Worlds Clothing Exchange? A. I said for me. I paid him.

6378

Q. While you were working for the Worlds Clothing Exchange? A. That is right. I was contracting for the Worlds Clothing Exchange. He was breaking in in my place as a cutter. I paid him \$20 a week. I should not have given him 20 cents. 20 cents is all, because he was Mendy's brother.

Q. How long did Mendy's brother work for you? A. I don't remember definitely. I know he worked some time.

Q. How long? A. Six months or more. I don't remember definitely.

Q. Is it not a fact that he worked there

approximately two years? A. I don't remember definitely.

Q. If you don't remember definitely, why did you say six months? A. I said six months or more. I don't remember definitely. I told you he worked there. Get the record and it will show you.

Q. I am asking you how long he worked there. A. I don't remember; I know he worked there. I paid him \$20 and I should not have given him 20 cents.

6380

Q. While working there did you ever see Mendy Weiss in the place of business of the Worlds Clothing Exchange? A. I did.

Q. Many times? A. I seen him there a number of times, while his brother was there, and I saw him many times while Lepke was there, and the whole mob were there—Charlie Gurrah and everybody else.

Mr. Barshay: I move to strike that out as not binding.

The Court: Strike it out as not responsive. You are again told not to volunteer information.

6381

Q. Did you see Mendy Weiss there while Rosen was working in the same shop?

Mr. Turkus: I object, that is not the testimony at all. It is embracing a state of facts not testified to in this case by any witness.

The Court: Sustained as leading.

Q. Was Rosen working as a truckman? A.

6382

Paul Berger—For People—Cross

(interrupting) What do you mean, as a truckman? How can he work on a truck? Do you know how many truckmen there are in the place?

Q. Was Rosen doing work for the World Clothing Exchange? A. Was doing trucking. He was only a foreman. He came up for five minutes. How long do you think he was there?

Q. He came there very often, didn't he? A. I wouldn't say very often.

6383

Q. He came there every day, didn't he? A. When, the times we had work. We didn't ship all our work out to Louis Cooper.

Q. When you had work, Rosen was there every day, wasn't he? A. I beg your pardon, he was not. Sometimes he would call up. What the hell he wants to come down to Broadway and Eighth Street when his office on Fifth Avenue some place?

Q. Isn't it that he even came more frequently than once a day? A. When we had work.

6384

Q. When you had work, he would be there sometimes two or three times a day, wouldn't he? A. No, since. No reason for it. Could he spend so much time? The man was taking care of the business for Louis Cooper. I had one lousy office down in the World's Clothing Exchange. He had to take care of about a hundred accounts. He had to call up on the phone, did we have any work, he got something to pick up. Sometimes he didn't send work out at all. He sent it to other places. He was working for Louis Cooper. He had to take care of maybe a hundred accounts. I was a peanut account to him. I used to ship four hundred or five hundred a week.

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6385

Q. Are you through? A. That is right.

Q. Louis Cooper did the bulk of the work for the World's Clothing Exchange while you were there, didn't he?

Mr. Turkus: I object to it. This is incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Not the whole time that I was there.

Q. Most of the time that you were there, was not most of the trucking done by Louis Cooper?

6386

A. Not most of it. There was a lot of work that had to be sent to New York and when it was sent to New York Louis Cooper can't handle it. He only handled stuff that went to Jersey.

Q. Rosen was working for Louis Cooper, wasn't he? A. That is right.

Q. And you saw him in your place of business, didn't you? A. I did. I seen him before he came to my place of business, too. I used to know him from the avenue.

6387

Q. Did you ever see him at your place of business at any of the times when Mendy Weiss visited there? A. Absolutely not.

Q. Never did? A. Absolutely not.

Q. It never happened that they met in your place of business? A. Absolutely not.

Q. And yet you say Mendy Weiss came to your place of business frequently to see you and see his brother, is that right? A. What would you call frequently? There was times I didn't see him in months.

Q. What do you call frequently, when you said in answer to my question that he was there

6388

Paul Berger—For People—Cross

often? What did you mean by that? A. I would say he was there maybe a dozen times since I was there. The way you are talking he is liable to think he was there 180 times.

Q. Are you drawing a salary now from this business at 599 Broadway? A. I am.

Q. Are you drawing \$150 a week? A. I am.

Q. And you have been drawing that during all the time that you have been in the custody of the police? A. That is right.

6389

Q. That is true, isn't it? A. That is right.

Q. What do you do with the \$150 a week that you get now?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Talley: Exception.

Q. It does not cost you anything to live at the hotel that you are putting up at, does it? A. No.

Q. Your board is paid; your lodging is paid? A. That is right.

6390

Q. And has been since May or June of this year?

Mr. Turkus: I object to the form of the question. It is not May.

Q. Is that right? June 5, 1941? A. Not June 5th.

The Court: Just a minute. There is an objection.

Q. Was it in June?

The Court: Please. The Court refuses to engage in a brawl. Objection was made that requires ruling. What is the objection? Repeat it again.

Mr. Turkus: I object to the form of the question.

The Court: Isn't this witness in custody?

Mr. Turkus: The witness is in custody of the New York City Police Department.

The Court: Under an order of the court?

6392

Mr. Turkus: That is right.

The Court: Then it may fairly be assumed that being a prisoner and being held under an order of the court, that the City pays his board, of course, the same as if he was locked up in a cell.

Mr. Talley: Is the objection sustained?

The Court: Certainly it is sustained. It has nothing to do with the case anyway.

6393

Q. You were locked up in a cell, weren't you, when you were first arrested? A. I was.

Q. And spent a week there, did you? A. I did.

Q. In the Tombs prison in New York? A. That is right.

Q. And you were not driving an automobile during that week that you were in the Tombs, were you?

Mr. Turkus: It is a known fact in the law that one charged with homicide is held

6394

Paul Berger—For People—Cross

without bail, so that that necessarily and obviously is an impossibility.

The Court: It is immaterial anyway.

Q. You are still being held on a homicide charge, aren't you? A. Yes.

Q. And the charge is the killing of Joseph Rosen. That is true, isn't it?

6395

Mr. Turkus: Participation. I object to the form.

Mr. Talley: The law does not recognize any difference. You ought to know that.

The Court: May I ask this?

Mr. Turkus: Yes.

The Court: Did I make the order holding this witness, or was it made in New York?

Mr. Turkus: No, this witness was held on a short affidavit in the Felony Court.

The Court: I am talking about putting him in custody of the police. Who made that order?

6396

Mr. Turkus: That is either a Supreme Court order or it is an order downstairs in the Felony Court. My recollection is—

The Court: It is a New York indictment?

Mr. Talley: No, it is not.

Mr. Turkus: No, he was held in the Rosen case on a short affidavit for his participation.

The Court: I thought he was indicted in New York?

Paul Berger --For People--Cross

6397

Mr. Turkus: No. He is on bail on New York indictments.

The Court: He was held on a short affidavit?

Mr. Turkus: I do not want the jury to be confused.

The Court: So whoever made the order was some Judge in Brooklyn?

Mr. Turkus: That is right, in the Felony Court.

The Court: The reason why the court sees fit to place this witness in the custody of the police, instead of remanding him to jail, is the Court's affair and is not the affair of this jury.

6398

Mr. Turkus: That is right.

Mr. Talley: I take an exception to that.

The Court: And cannot be questioned.

Mr. Talley: I take an exception to that statement.

The Court: And furthermore it would be prejudicial to conjecture as to the reason why it was deemed wise to take him out of the jail and put him in the custody of the police.

6399

Mr. Talley: I take exception to that statement. As I understand the situation, this witness was held, charged with complicity in the murder of Joseph Rosen. He is being held without bail and the order, or any order, if there is such a one, has nothing to do with the situation prevailing, that he is under arrest charged with the murder and killing of Joseph Rosen.

6400

Paul Berger—For People—Cross

The Court: That has no bearing upon this question that is before the Court.

Mr. Talley: It has a lot of bearing—

The Court: That is simply diversion.

Q. After you were a week in jail, you were taken to the Bossert Hotel, is that correct? A. That is correct.

Q. And would that be in the month of June, 1941? A. That is correct.

6401

Q. And you have been at the Bossert Hotel ever since? A. That is correct.

Q. You have not been paying any expenses in the Bossert Hotel, have you?

Mr. Turkus: I object.

Q. For your lodging or your board?

Mr. Turkus: That has already been answered.

The Court: Sustained.

Mr. Talley: Exception.

6402

Q. It is very much more comfortable there than it was in your cell in the Tombs, isn't it?

Mr. Turkus: I object to it.

The Court: Sustained. It is not done for that reason. It is done for a reason of sound public policy. The Court knows the reason why it was done and why the Court deems it necessary for it to be done, to get him out of Raymond Street jail.

Mr. Talley: I except to that statement of the Court as being prejudicial.

Paul Berger—For People—Cross

6403

The Court: I advise you you are treading on dangerous ground. Get off it.

Mr. Talley: I think your Honor inadvertently said this witness was in Raymond Street jail. He never was.

Mr. Turkus: In jail.

The Court: That was an inadvertence.

Mr. Turkus: It applies to any jail.

The Court: What I mean is this, that I have made in this court many such orders. It has always been upon the ground of sound public policy and what appeared to the Court to be necessity. It is not a matter that concerns a jury in this or any other case. It makes no difference whether I made this order or whether some other Judge made the order; it is none of the jury's business and you may not question it. The man is a prisoner but he is not held as a prisoner in Raymond Street Jail or in the Tombs or any other prison for a reason that is sufficient to the Court and does not concern the jury. Now let it rest there.

6404

Mr. Talley: I take exception to your Honor's statement.

Mr. Barshay: May I address the Court, your Honor?

The Court: I instruct the jury to completely disregard it.

Mr. Barshay: May I address the Court?

The Court: No, not on that. The ruling is made and it is none of your affair.

Mr. Barshay: Will your Honor give me an exception?

The Court: Yes.

6405

6406

Paul Berger—For People—Cross

Mr. Talley: Will the District Attorney tell us what Judge made the order, if there is such an order?

The Court: Here is the Judge right here (indicating). Judge Solomon, stand up. Did you make the order?

Magistrate Solomon: Sitting in the Felony Court, on two occasions, he was brought before me; at the request of the District Attorney's office, under a short affidavit, he was continued.

6407

The Court: How about the order committing him?

Magistrate Solomon: No, I made no such order; just that.

Mr. Talley: Now I ask the District Attorney in charge of this case if there is such an order and, if so, what Judge did make it?

Mr. Turkus: I just instruct Mr. Talley all he has to do is walk downstairs to the Felony Court and look it up. It is there on the record.

6408

Mr. Talley: I ask the District Attorney to put upon the record now who made the order and when it was made, and I further ask the District Attorney, in view of his apparent reluctance to produce that order—

Mr. Turkus: "In view of his apparent reluctance" is a reprehensible remark that I can well take from him.

The Court: Do you know who made it?

Mr. Turkus: I don't. I know it was

done in the Felony Court. Who the Judge was is immaterial.

The Court: It is none of the jury's business and if Judge Talley wants to know from curiosity, he can find out.

Mr. Turkus: I cannot charge my mind with all those things, Judge.

The Court: Let us please proceed with the trial.

Mr. Talley: Then I understand the District Attorney does not agree to produce that order in this court?

6410

Mr. Turkus: There is no such understanding at all.

The Court: You are trying to put the District Attorney in the wrong attitude and the Court rebukes you for that. I say that reluctantly. The situation was sufficiently clarified before and this tends to cause the jury to confuse it. If there is any persistence along this line, the jury will be excused and we will see how far you go then.

Mr. Talley: This situation is not clarified at all—

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The Court: The Court instructs you not to go any further on that.

Mr. Talley: I take exception to your Honor's ruling and I say that it all has a bearing—

The Court: Judge, if you persist in this, there is always a risk of provoking something that you will use as a basis for a motion for a mistrial. I advise you to get off dangerous ground. Try your case.

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Mr. Talley: I appreciate your advice but I think I am quite as competent as your Honor is to know when I am on dangerous ground, when I am not.

The Court: The jury is excused until the Court sends for you.

Mr. Talley: I take an exception.

The Court: After the jury goes out, you may complete your record and the jury will then come back.

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Mr. Talley: I have no record to complete.

(The jury retired from the court-room.)

The Court: Now the jury is out of the room. This is without prejudice because the jury is out of the room and because they are not permitted to read newspapers concerning this trial.

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In all orders made by this court, the Court has followed the practice which was inaugurated by Mr. Dewey in New York and which was followed by the Judges in New York and the reason has been to prevent the assassination of witnesses in the jail. At one time the situation was so desperate here that in trying a case it was deemed necessary to get an armored bank car with armed police outriders in order to escort one witness here because it was indirectly reported that there was a scheme on to block traffic and to assassinate that witness on his way to the jail. That witness is reported to have com-

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mitted suicide this morning by jumping out of the eighth story window of a hotel.

If there is anything more to be said by way of a record, sir, put it on the record and have it over with.

Mr. Barshay: Now may I address the Court, your Honor?

The Court: Yes.

Mr. Barshay: Of course, with respect to this witness—

The Court: The Court will say nothing more on it nor permit anything further to be said on the subject when the jury comes back.

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Mr. Barshay: Can I say something now, Judge?

The Court: Yes.

Mr. Barshay: Of course, out of the mouth of this witness, he testified here that at no time was he induced to flee but I do not know whether or not he said or was asked about intimidation or threats, but the point is this, Judge, if his being placed in a hotel would induce him to give false testimony, may we ask the Court isn't that proper, if we can convince the jury through questions and answers that his treatment, his special treatment, could induce him to give false testimony?

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The Court: The Court has not discussed that question at all.

Mr. Barshay: That is the purpose of the inquiry, Judge.

The Court: The Court has ruled on a

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specific point of judicial procedure and the Court will not be drawn into saying something on which you can place an exception to raise in the event of conviction.

Mr. Barshay: The only reason I would be interested in that is whether or not that treatment induced false testimony, and no other reason.

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The Court: You are not going to draw the Court into that. The Court will rule on that in response to objections to questions.

Mr. Barshay: I only want to make my purpose clear, Judge.

The Court: You have it on the record. If there is anything else to be said, let us have it on the record.

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Mr. Climenko: If your Honor pleases, since the jury is out of the room now,—your Honor recalls that I mentioned that matter to you this morning with respect to those papers. May we discuss it now, your Honor?

The Court: Yes, this is a good opportunity.

Mr. Climenko: The situation is simply this. We on behalf of our client subpoenaed certain records which were records made by the Police Department of the City of New York and records in the possession of the City of New York, and we asked for their production here.

Mr. Turkus: The records are here.

Mr. Climenko: The other day, on Fri-

day, when we requested them, it was in Mr. Turkus' mind that they were not in his possession or in the possession of his office.

Mr. Turkus: They were not in the court-room.

Mr. Climenko: I am going to make a complete statement, Mr. Turkus, and nobody is going to be misunderstood.

Mr. Turkus: O. K.

Mr. Climenko: We persisted, however, and Mr. Turkus has completed his investigation and he finds that he has those records. In the meantime, so that the record may be complete as to what has happened as to our efforts to obtain them, we had subpoenaed an officer of the Police Department to come here and produce them and that man did appear here, though I did not know he was here, and I understand that he had a conversation with someone from the District Attorney's office—what I am now saying is not in criticism of anyone—but he was apparently told that since the District Attorney had them, there was no necessity for him to remain here.

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Now, if your Honor pleases, those are records that we believe we have a right to see; they are in the possession of the District Attorney but they are not the property of the District Attorney. They are public records. We called for their production from the only source that we can get them and, if your Honor pleases, those are not records having to do with

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this case as a case but rather are they records having to do, as I understand the situation, with the work of the Police Department of the City of New York during the period from about September of 1935 to the end of 1936 in respect to surveillance by agents of that department of one of the persons on trial here. Now we ask Mr. Turkus, through your Honor, making the request to your Honor respectfully, of course, for the production of those records. For the record, so that I will be entirely clear—

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The Court: What is the nature of these records?

Mr. Climenko: I thought I described them, your Honor. They deal with surveillance by the Police Department of the defendant Buchalter.

The Court: Are they required in connection with the examination of this witness?

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Mr. Climenko: They may be, your Honor, because those records, as I understand it, have to do with all of the activities of that defendant, have to do with an identification of the people whom he saw, what he did throughout the period that I described.

(At this point the witness left the court-room.)

The Court: May I see the record?

Mr. Turkus: These are not public records. This is an investigation conducted

by the Police Department in regard to certain criminals, crooks, and gangsters. To release these public records—

Mr. Wegman: Even with the jury out of the room, I take exception to that, if your Honor pleases. I think the District Attorney ought to be criticized for making a speech for the purpose of the newspapers, even though there is no jury present, and even though the jury does not read the newspapers while on this case.

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The Court: This is properly a basis on which a question of law is predicated.

Mr. Wegman: It may be, but the District Attorney has no right to make any such statement. His statement is grievously wrong and knowingly wrong to him. This is a record of the Police Department's surveillance of one individual.

Mr. Turkus: Have you seen the records?

Mr. Wegman: And it was a 24 hour guard. We have been informed by the Police Department.

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Mr. Turkus: You do not know what you are talking about.

Mr. Wegman: We have been informed by the Police Department.

The Court: Please do not interrupt counsel when he is talking to the Court.

Mr. Turkus: I am stating to the Court, your Honor, that these records are in connection with crooks, criminals and gangsters, that they are not public records.

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and that it would be unconscionable, that it would be against the public interest, to reveal the contents of these documents as we have them now, to anybody.

Mr. Wegman: And I say that is a deliberate lie on the part of Mr. Turkus, and I cannot use a stronger word.

The Court: Counselor, I am very sorry but that is going to cost you ten dollars which you will pay right away.

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Mr. Wegman: I will be glad to, if contempt of Mr. Turkus is contempt of court.

The Court: It will cost you ten dollars each time.

Mr. Wegman: Incidentally I take exception and note my right to appeal from your Honor's ruling.

The Court: Yes, and see how far you get.

Mr. Wegman: I pay it under protest.

The Court: I am very much surprised, considering the quarter from which it comes, because you surely forgot yourself.

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Mr. Wegman: That is perhaps true and I apologize if the Court took it as that.

The Court: You should go through life without ever doing that.

Mr. Wegman: I do not recall any other occasion when I have done it but there are certain things that go too far. There is a point to which one can be tormented by conduct of another person which is unconscionable and which after a while gets so far under the skin that it causes

an eruption. I think that Mr. Turkus's conduct calls for condemnation from your Honor, but I don't suggest it because I would not presume to suggest to your Honor what your Honor ought to do.

The Court: Counselor, I do not think you will do it again, but the ten dollars will be a reminder.

Mr. Wegman: I hope it has been noted that I paid it under protest.

The Court: The Court was goaded on Monday at one point, where there was an obvious attempt to create a wrong record situation that might be misunderstood in the eventuality of an appeal, into saying to a distinguished counsel in the case, "Hold your tongue." The Court has been trying to bite his own tongue out ever since saying it. That simply tumbled out under the impulse of the moment.

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Mr. Wegman: The Court suggested on the record on Monday, at least the Court said in so many words, that one of the defense counsel was telling a deliberate untruth.

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The Court: Please, no further of this.

Mr. Climenko: If your Honor pleases—

The Court: No more. I am hearing Mr. Turkus. He was interrupted. Where was that?

(Remarks of Mr. Turkus were read.)

Mr. Turkus: However, they are about three inches in thickness. They refer not only to the type of individuals I have

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mentioned but their activities and their associates.

The Court: I am asking you this: Do they contain any Q's and A's by witnesses in this case?

Mr. Turkus: They do not.

The Court: Do they contain any depositions by witnesses in this case?

Mr. Turkus: They do not.

6437

The Court: Are they purely police reports?

Mr. Turkus: They are police confidential reports of activities of the Police Department.

The Court: No depositions?

Mr. Turkus: No depositions.

The Court: No admissions?

Mr. Turkus: No conversations, no admissions that I could find. They are about three inches thick.

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The Court: All right. Then what was it that counsel desires to have done, so that the Court can make an intelligent ruling, if that be possible?

Mr. Wegman: May I state what those records are, your Honor? It has been stated in court, and it may as well be made clear. The defendant Buchalter was under surveillance by the Police Department of the City of New York every single day over a period of time. He was followed by police officers—

The Court: Without that, what is the purpose of this? I want to get the procedure correct.

Mr. Wegman: These records of the Police Department show the report of these police officers as to where the defendant Buchalter was, and with whom he spoke, and who spoke to him, over the period of time as to which these witnesses have testified. It is important for the purpose of contradicting the testimony of the witness Rubin and of the witness Berger to show that the Police Department's own records indicate that their testimony could not have been true.

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Mr. Turkus: Unfortunately—

Mr. Wegman: That in these records—

The Court: It requires no further argument.

Mr. Turkus: I want to make a statement of fact.

The Court: I am hearing counsel. Go ahead.

Mr. Wegman: We want to see these records for two reasons: First, because in order to lay a foundation we ought to be able to cross-examine these witnesses as to places and times indicated by these records and, secondly, to call the police officers who witnessed—

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The Court: I understand now. Have you any authority of law to show that the law has been changed on that point?

Mr. Wegman: May I ask your Honor on what point? I am afraid that I do not understand.

The Court: You know that these have always been held to be confidential.

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Mr. Wegman: These are not investigations of crime. If they are, perhaps they are confidential. They are a record made by police officers of surveillance—

The Court: Pardon me. Has the law been changed recently on that point?

Mr. Wegman: Not that I know of.

The Court: Then the Court is compelled to rule against you, but still I don't know specifically what your motion is.

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Mr. Wegman: Our motion—we subpoenaed the Police Department to produce those records.

The Court: I know that.

Mr. Wegman: We have now asked for their production.

The Court: They are here. Now you want to see them, is that right?

~~Mr. Wegman: Specifically as to certain dates.~~

The Court: (To District Attorney) Do you object?

6444

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Wegman: Might they be marked for identification?

The Court: Yes.

Mr. Wegman: May I also make note of the fact that we are asking only for certain dates, not for the entire record.

Mr. Turkus: So that the record may be clear—

Mr. Wegman: We want the record of the month of September, 1936.

The Court: Mark the outside of the folder.

Mr. Turkus: So the record may be clear, may I make this statement? It is in the absence of the jury. Had there been any such police surveillance of the defendant, there may not have been this homicide. Unfortunately the only kind of surveillance was known in police parlance as a harassing detail, an annoying detail, to annoy. In addition to that, it was, of course, an incomplete type of police surveillance. If this defendant and others had been followed 24 hours a day, we would not have had this indictment; there would have been no necessity for it. It was known as an annoying or harassing affair. In addition, these papers which are about three or four inches in thickness as you can see—

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The Court: Please cut things short. Mark the folder for identification.

(Folder marked People's Exhibit Z-18 for identification.)

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The Court: Not only is this illegal but were the Court to divulge this, it would practically permit these confidential records to be divulged for counsel in a manner that could be used in connection with a defense of any of the other cases in so-called Murder Incorporated line.

Mr. Wegman: May we ask your Honor before making that statement to look at

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these records because I think that Mr. Turkus has just completely justified my resentment of his earlier statement and has indicated that his earlier statement was not in accordance with facts, as I charged that it was not, when he says that these are records of a harassing detail, not an investigation.

Mr. Turkus: They are an investigation—

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Mr. Wegman: I suggest, your Honor—

Mr. Turkus: Your Honor, I am not going to permit him to create a false record for a contingent basis.

Mr. Wegman: May I be permitted to continue my statement?

Mr. Turkus: I resent this thing which cost him a ten dollar fine.

The Court: Mr. Wegman knows nothing about the contents because he has not seen them. He is not going to be permitted to see them and all the record that is going to be made has been made.

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Mr. Wegman: May I ask your Honor to look at them yourself?

Mr. Barshay: May I address the Court because the vital point has been missed?

The Court: What is it? Is there anything new?

Mr. Barshay: Yes. First of all we do not want to see a single thing that has anything to do other than with respect to the whereabouts and the people who saw Buchalter on the specific occasions when Rubin and Berger said they saw him on

certain days beginning September 11, 1936, up to and including June, 1937, to see whether or not there is something in those records which would dispute the truth of their allegations. For example, your Honor, if Berger said that he saw Buchalter at the Hatfield Hotel on a certain day, at a certain hour,—and I tried to be specific with respect to that—and these records would show that on that day the police reported him to be at an entirely different place in the city of New York, with different people, then in the interest of public justice these records are not confidential and your Honor should look at them and see if there are any such things in existence. Public policy demands—

6452

Mr. Turkus: Why don't you look at them, Judge?

The Court: If a policeman took the stand and testified otherwise, then the question as to whether or not these records could be used to contradict the policeman, provided they were made by him, would come up and call for a ruling, but that is not present at this moment. Now as it stands, in addition to the fact that these are privileged and confidential under the law, they are hearsay. I will go further than that and I will do this and then stop because I am not going to get into too long a harangue. You practiced law, counsellor, and I assume you have employed detectives and so have I. I prac-

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ticed law for twenty years and spent many thousands of dollars for detectives who rendered private reports and I have paid good money per day for trailing and making those reports and found them in a large percentage to be arrant humbug. I have had to employ detectives to watch detectives and even they sold me out. That may make you think.

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Mr. Barshay: May I finish the statement, Judge?

The Court: The Court is not going to say any more because I do not propose to have any record that will cause an appellate court to think that that is what activates my ruling, but I am telling you it is just arrant hearsay. You are not going to be permitted to have the inspection and I am not going to hear anything more.

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Mr. Barshay: Judge, I did not finish my statement. I will finish it and I will take my exception and sit down.

The Court: Very well.

Mr. Barshay: First, your Honor, I do not know of any law which makes these police records private records. My understanding is that they are public records and I cite to you as authority the case I tried, *People against Behan*, where he was indicted for stealing public records, and I contended under the law there that they were private records, being under the same impression then as your Honor is now. I was overruled by the Court and the in-

dictment was sustained and we had to go to the jury on the question of fact. Now, second, I do not know which police officers, your Honor, to subpoena because unless I know which police officer said he followed him and reported to his chief that he did follow him and said in that report whom he saw the defendant Buchalter with, at what place, at what time, at what date, I am in no position to subpoena the entire Police Department of the City of New York. Third, under the law, the law presumes that an officer of the City of New York does his duty honestly and faithfully and not that he does it by hearsay and, if in Mr. Turkus' possession or in the Police Department's possession there is evidence which gives the lie to any witness offered in this court-room, as a public duty he owes it not only to the defendants but to the community to produce him.

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Mr. Turkus: Nobody finds fault with that statement. There is another—

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The Court: The Court will permit no more post mortem.

Mr. Barshay: I take exception.

The Court: A long time back the Court made its ruling.

Mr. Barshay: Exception.

Mr. Talley: I ask to be heard upon this point, if your Honor pleases.

The Court: Go ahead.

Mr. Talley: Counsel for defendant Weiss have subpoenaed certain D.D.4 records from the Police Department. They have not been produced and I am asking

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the District Attorney now if he has them in court and if he will permit the examination of them preliminary to adducing testimony with respect to them.

Mr. Turkus: The first I heard of any D.D.4's and 5's other than this. What D.D.4's and 5's have you reference to?

Mr. Talley: We want them in reference to the statements taken by the police in reference to this case from witnesses who have testified and we presume will be called to testify in this case.

Mr. Turkus: You don't understand what D.D.4's and 5's are, apparently, Judge Talley.

Mr. Talley: What is it?

Mr. Turkus: Apparently you have some misconception about D.D.4's and 5's.

Mr. Talley: No, we have not. We know exactly what they are.

Mr. Turkus: You mean you want the D.D.4's and 5's in the Rosen case?

Mr. Talley: Yes, certainly.

Mr. Turkus: They are in court. We have them.

Mr. Talley: May we inspect them?

Mr. Turkus: Of course not.

Mr. Talley: Will the Court permit them to be marked for identification, and I request that the Court inspect them.

The Court: Mark for identification only.

(Folder marked People's Exhibit Z-19 for identification.)

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Mr. Talley: May we have the number of papers contained in this folder counted now, preferably by the clerk of the court?

The Court: Is it much of a folder?

Mr. Turkus: It is. It is a substantial folder.

The Court: How many pages?

Mr. Turkus: I don't know.

The Court: No. We are not going to lose time on that.

Mr. Talley: Will the Court permit counsel to count the number of papers?

6464

The Court: No, that carries an insinuation which is wholly uncalled for. I assume Mr. Turkus is a man of honor.

Mr. Turkus: These are Police Department records.

Mr. Talley: I ask they be counted so we will know how many of these separate sheets are in the folder.

The Court: The Court has ruled.

Mr. Talley: I take an exception to your Honor's ruling.

The Court: Anybody else wants to be heard?

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Mr. Climenko: Yes, if your Honor pleases, merely for the record, if I may, your Honor. I should like to have marked for identification a subpoena duces tecum signed by your Honor and directed to Louis Valentine as Police Commissioner, calling for the production of those records which presumably have now been marked People's Exhibit Z-18 for identification.

The Court: All right, mark it.

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(Paper marked Defendants' Exhibit D for identification.)

Mr. Turkus: May the subpoena be marked in evidence, your Honor?

The Court: For identification. Bring back the jury.

(The jury returned to the court-room. The witness resumed the stand.)

6467

By Mr. Talley:

Q. Since you have been in the Bossert Hotel, Berger, with whom have you talked about this case? A. To no one.

Q. You went into the Bossert Hotel in June, 1941? A. That is right.

Q. And since June, 1941, up to this present 12th of November, 1941, you say you have talked to nobody about this case? A. In the Bossert Hotel. I answered that question, sir.

6468

Q. I asked you whether you talked with any of them since you have been in the Bossert Hotel?

Mr. Turkus: I object to it.

Q. I did not ask you whether you talked in the Bossert Hotel; I asked you since you have been there? A. You asked me if I spoke to anybody about this case in the Bossert Hotel.

Q. I beg pardon?

Mr. Turkus: Then there was a misunderstanding.

Q. Since you have been confined in the Bessert Hotel, under police guard, as a defendant in this Rosen case, with whom have you talked about this case, any place? A. To the District Attorney.

Q. Judge O'Dwyer? A. I did.

Q. Who else? A. Mr. Turkus, Mr. Klein.

Q. Who else? A. No one else.

Q. Did you talk to Captain Bals of the Police Department? A. I did not.

Q. Then the only ones that you talked to are those that you named, is that so? A. Talked to.

Q. Who was the first of those three that you talked to, Judge O'Dwyer? A. That is right.

Q. Was that in the District Attorney's office? A. That is right. Captain Bals was sitting there.

Q. And then how many times did you talk with him about this case? A. A couple of times.

Q. How many times did you talk with Mr. Turkus about your testimony in this case? A. A number of times.

Q. How many? A. A number of times.

Q. How many? A. About three or four times.

Q. And how many times have you talked with Mr. Klein about this case? A. Klein was there too at the time.

Q. Klein was always with Mr. Turkus when he was talking to you? A. That is right.

Q. And you never talked to Mr. Klein in the absence of Mr. Turkus? A. Unless Mr. Turkus walked out of the office, or vice versa.

Q. Then your testimony is that you talked with Mr. Jacobs the same number of times that you talked with Mr. Turkus, is that right—

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Josephs, not Jacobs—you talked with Mr. Josephs the same number of times that you talked with Mr. Klein? A. I was not talking to Josephs; I was talking to Mr. Turkus.

Q. And who else? A. Quite a number of men in there. Some of them I didn't know.

Q. Didn't you mention Mr. Josephs? A. I mentioned Mr. Klein. Maybe Josephs was there, too, I don't know. There was a number of men there.

6473

Q. Did you ever talk with Mr. Klein without Mr. Josephs being present? A. Yes, if he walked out.

Q. How many times did you talk with Mr. Klein about your testimony in this case? A. When he was in and out? Repeat that question again, please.

Q. You know what I mean by "How many times," don't you? How often? A. Talked to whom?

6474

Q. Mr. Klein. A. As many times as I spoke to Turkus, unless they walked out. I don't know how many times.

Q. You remember when this case commenced, don't you, the 15th of September? Do you remember when the trial began? A. That is right.

Q. Since that date have you talked with Mr. Klein of the District Attorney's office? A. I did.

Q. Didn't you talk to him while the jury was being picked in this case? A. I did.

Q. And Mr. Turkus was not present when you were talking to Mr. Klein? A. No.

Q. While the jury was being picked, was he? A. That is right.

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6475

Q. But you just told us that you never talked to one without the other being present, didn't you? A. He spoke to me when I was before the Grand Jury alone.

Q. Do you want to change your testimony that you gave, that you never talked with Mr. Klein except in the presence of Mr. Turkus?

Mr. Turkus: I object to it.

Q. About your testimony in this case? Do you want to change that?

6476

Mr. Turkus: I object to the form of the question.

The Witness: Repeat that question.

The Court: Sustained.

Mr. Talley: Exception.

Q. While this case was going on, after the selection of the jury was commenced, you testified before the Grand Jury, didn't you? A. I did.

Q. And until this case commenced by the beginning of the selection of the jury, you had not testified before the Grand Jury, had you? A. I don't think I did.

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Q. And up to that time you had never given a written statement to the District Attorney or to the Police Department, isn't that so? A. I never signed a statement.

Q. Did they ever take a statement from you in writing? A. What do you mean, take a statement from me in writing? What do you mean by that? Explain that to me, please.

6478

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Q. You do not know what that means? A. Will you explain it to me, please?

Q. You do not know what it means, is that right? A. I want to know what it means definitely before I answer.

Q. Do you say you do not know what it means?

6479

Mr. Turkus: I object to it. That witness has repeated three times he wants to know what is meant by a statement.

The Court: Sustained.

Mr. Talley: Exception.

Q. Did you see a stenographer taking down any statements that you were making to Judge O'Dwyer, to Mr. Turkus, or to Mr. Klein, before you testified before the Grand Jury? A. I seen Turkus and Klein take notes. I don't know if it was stenography or not.

6480

The Court: Any shorthand writer?

The Witness: Not that I know of. I seen them taking down notes.

Q. Did you see any stenographer taking down what you were saying, the same as this court stenographer is taking it down? A. I did not.

Q. Did you ever sign a statement for the District Attorney? A. I did not.

Q. You were asked to sign it several times, were you not? A. I was not asked.

Q. Had you given any written statement or signed any statement up to the very day you went before the Grand Jury?

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Mr. Turkus: That is objected to. It is repetitious.

The Court: That is what he said.

Mr. Talley: Is the objection sustained?

The Court: I say that is what he said.

Mr. Talley: I would like to have it again, if your Honor pleases.

The Court: It is repetitious.

Mr. Talley: I have a right to be repetitious on cross-examination.

The Court: Who is ruling? I thought I was. 6482

Mr. Turkus: That is law I never heard of before Judge Talley pronounced it.

The Court: That is said in good humor. The objection is sustained, and I guess that is what counts.

Mr. Talley: Exception.

Q. You refused to testify before the Grand Jury unless you got immunity, didn't you? A. I don't know what you mean by that, definitely.

Q. Don't know what I mean definitely? Do you know what immunity from prosecution is, to be free? You know what that means? A. I have an idea. I just want the explanation definitely so I can explain it definitely. You explain it to me. I ain't sure of it. I have an idea of it but I want to know definitely. 6483

Q. I will tell you definitely. Immunity is given by a District Attorney against his being prosecuted for a crime which he admits committing. Is that plain?

Mr. Turkus: Just a minute. That is not plain at all.

6484

Paul Berger—For People—Cross

Mr. Talley: It is not for you; it is for the witness.

Mr. Turkus: I don't care about that. That is bad law. It is an improper question. It is incorrect law.

The Court: Let the question be finished.

Mr. Turkus: It was finished. Is that clear?

Mr. Talley: The question is finished.

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The Court: There was a little confusion in pronouns. The way your question is phrased, it would keep the District Attorney from being prosecuted. You better re-frame it.

Mr. Talley: This witness knows so well what immunity is that it is carrying coals to Newcastle to explain it. He knows better than you and I—

The Witness: That certainly ain't true.

6486

The Court: Is it the fact, that you have been given immunity from being prosecuted for the Rosen murder as the finger man by being permitted to testify before the Grand Jury without signing a waiver of immunity? Did you so understand?

The Witness: I understand now.

The Court: You understand now?

The Witness: I understand that now. Ask me straight and I will tell you. Ask me what immunity means. Tell me what it is. I will tell you. I am here to tell the truth and I am telling it.

The Court: Please—

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6487

Q. Don't you think I speak plain English?
A. You are pretty tricky about your questions.

Q. Is that so? A. Speak to me plain, will you, please?

Q. Am I not speaking to you plain? A. A whole lot of tricking is right behind you. I am straight. I am telling you the truth.

Q. When did you become straight? A. After I spoke to the Judge.

Q. And not before? A. I was not. I am telling the truth now. I probably lied before.

6488

Q. You were a crook, a strong-arm man, and a murderer, before you spoke to the District Attorney? A. No murderer. I was a strong-arm man; I was a slugger; and that's about all, and a cutter.

Q. That is about all? A. After I spoke to the Judge I told him I am going to tell the truth, and I am telling the truth. You are the one—

Q. You put your finger on Max Rubin, though, didn't you, before you spoke to the District Attorney? A. I did, and so did I put my finger on Rosen, and if Mendy knew him, why the hell did he take me over there to show me who he is? Why didn't he go himself if he knew? I wish the hell I had never gone over there, damn it. He knew him, didn't he?

6489

Mr. Climenko: If your Honor pleases—

The Witness: Why the hell did Lepke tell me to point him out, God damn him? Didn't he know him?

Mr. Climenko: If your Honor pleases—

The Court: This must stop.

The Witness: He knew him so well,

6490

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why did he want to implicate me? If he knew him, he made sure I'd be implicated, and you know that, don't you? You look me straight in the eyes and tell me if he didn't know that. If that man you claim knew that man, then why did Lepke tell me to go and point him out to Mendy, if Mendy knew him? Why?

The Court: Please sit back in your chair and stop talking.

6491

The Witness: Answer me that question.

Mr. Climenko: If your Honor please, by reason of the apparent uncontrolled—

The Witness: I wish he never done it. I wouldn't be here now.

Mr. Climenko: I repeat my application, if I may—

The Witness: And you know it.

The Court: Keep quiet.

6492

Mr. Climenko: By reason of the fact that it is apparently impossible to control this witness through the admonition of the Court, and on behalf of the defendant Buchalter, I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: The Court takes this view, that the witness was twitted. No objection was made to the twitting by counsel or any of the defendants. That was the time to object. That is what provoked this. It was a reaction which might have been foreseen. It must not happen again, Mr. Witness. You behave yourself in the future and just answer questions.

The Witness: I will try, the best of my ability.

The Court: If you sit back in your chair and relax, instead of leaning forward and feeling resentful, this is less likely to occur.

The Witness: He is trying to trick me into something.

The Court: Just forget that. The incident is closed. Motion denied.

Mr. Climenko: Exception. May I state for the record, without desiring in any way to engage in any controversy as to what your Honor has said, that I have been paying quick earnest attention to the proceedings here, that I did not notice that the witness had been affected as your Honor said.

6494

The Court: No post-mortems. Don't take this on the record at all. Now, please sit down. The cross-examination will be resumed. The Court has ruled and you have taken an exception.

Mr. Climenko: Yes.

6495

The Court: There will be no speech making.

Mr. Climenko: I have no desire to make any speeches. I take my exception.

Q. Berger, you refused to testify before the Grand Jury unless you were given immunity, isn't that so? A. That is not so.

Q. You were given immunity, weren't you?

Mr. Turkus: He has already answered that.

6496

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A. I did not refuse it.

Q. Was it offered to you? A. What was offered?

Q. The immunity that you say you did not refuse?

Mr. Turkus: I object. The question is confusing unless the offer is explained as emanating from what source.

6497

The Court: It is beyond the proper scope of cross-examination. Once he admits that he has received immunity, that is all that pertains to this situation. Sustained.

Mr. Talley: Exception.

Q. You refused to testify in this court before this jury unless you were given immunity in this Rosen case, isn't that the fact?

The Court: Yes or no.

6498

A. I don't know definitely what counsel means. I went before the Grand Jury.

The Court: Did you say that you would not testify before the Grand Jury unless without a waiver of immunity?

The Witness: I did not say that.

Mr. Talley: That is not my question, sir. The Court misapprehended.

The Court: I will put it in a different way.

Mr. Talley: My questions is—I will put it the same way. My question is this: Did you not refuse to give testimony in

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6499

this trial unless you were brought before the Grand Jury and given immunity?

The Court: Yes or no.

A. No.

Q. Isn't that the reason you were taken before the Grand Jury after this trial had commenced?

Mr. Turkus: I object to it. He has twice said no to that.

The Court: Sustained. He cannot tell why he was taken before the Grand Jury.

6500

Mr. Talley: I except, your Honor.

The Court: That is the District Attorney's business.

Q. You knew that if you were brought before the Grand Jury and gave testimony about this case, you could not be prosecuted for it, did you not? A. I did.

Q. And you were so advised by lawyers to that effect, were you not? A. I was.

Q. And was your lawyer, Mr. Gardiner, with you when you came over and testified before the Grand Jury? A. He was not.

6501

Q. Was it your suggestion or was it your lawyer's that you be taken before the Grand Jury?

Mr. Turkus: I object to that. That embraces an improper state of facts not testified by this or any other witness.

The Court: Sustained.

Mr. Talley: Exception.

6502

Paul Berger—For People—Cross

Q. Who was your lawyer at the time you testified before the Grand Jury? A. I had no lawyer in the Grand Jury only Mr. Klein.

Q. Mr. Klein, the Assistant District Attorney?

A. That is right.

Q. He was your lawyer?

Mr. Turkus: I object to that. That is not the testimony.

6503

A. No, no.

Mr. Talley: That is what he said, he had no lawyer except Mr. Klein.

Mr. Turkus: He did not.

Q. What did you say?

Mr. Turkus: I can understand why the witness characterized your question.

6504

Q. What did you say? A. Will you please ask me direct questions and don't be tricky about it? I am telling the truth. I said Mr. Klein asked me. I did not say he was my lawyer. He asked me before the Grand Jury. He questioned me.

The Court: He was the Assistant District Attorney who conducted that examination?

The Witness: He was the one who was speaking to me in front of the Grand Jury.

The Court: Counsel wants to know if he was your lawyer?

The Witness: Absolutely not. That is ridiculous.

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6505

Q. Didn't you say that he was? A. Was he? I am asking you. I told you who my lawyer was, is today, Mr. Gardner.

Q. Yes. A. Klein questioned me in front of the Grand Jury. He ain't my lawyer.

Q. It was Mr. Gardiner who advised you about getting immunity?

Mr. Turkus: Objected to. That is repetitious. We have gone over that.

The Court: Sustained.

6506

Mr. Talley: Exception.

Q. It was Mr. Gardiner who arranged that you get immunity, wasn't it, before you testified?

Mr. Turkus: I object.

The Court: Sustained.

Mr. Talley: Exception.

Q. You charged this same Mr. Gardiner with stealing \$600 of your money, didn't you, in a proceeding in the City Court in the City of New York, in the Borough of Manhattan?

6507

Mr. Turkus: I object to it. That is entirely incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: Exception. It seems to me I have a right to show his freedom of accusing people of crime. I should not be stopped.

The Court: Don't argue after the ruling.

Mr. Talley: Exception.

6508

Paul Berger—For People—Cross

Q. You were sued for legal services by Mr. Gardiner's firm, were you not, in the City Court of the City of New York?

Mr. Turkus: I object to that.

The Witness: Let me answer that question, will you, please?

The Court: Sustained.

Mr. Talley: I except.

The Witness: I will tell you who told me to sue him.

6509

The Court: No. ♪

Q. And you made an affidavit that you did not owe him any money, didn't you?

The Court: Counselor, you are persistently violating the Court's rulings.

Mr. Talley: I am not, sir.

The Court: I beg your pardon, the Court rules that you are.

Mr. Talley: May I have an answer?

6510

The Court: Please don't do it any more.

Mr. Talley: Your Honor ruled that I can ask him about papers, affidavits.

The Court: Will you please proceed with the trial and come to order.

Mr. Talley: I am in order, sir.

The Court: Now you are shouting at the Court.

Mr. Talley: No, I am not shouting at the Court or anybody else. That is my natural voice.

The Court: You are distinctly rude and uncivil. The Court refuses to be goaded

to the extent that you are obviously trying to goad the Court at this or any other time. The Court will be patient to the utmost and take it on both cheeks from counsel. Now please proceed.

Mr. Talley: I won't proceed until I deny that I am trying to goad this Court into anything. I am cross-examining this witness and I am cross-examining him in accordance with the rules of evidence strictly and I have no time or disposition to be goading the Court. It is this jury that I am concerned with at this present moment.

6512

The Court: I know the whole speech is for the jury. Proceed.

Mr. Talley. Exception.

The Court: It is disorderly and it would not occur if there were no jury.

Mr. Talley: My conduct would be precisely the same, sir, jury or no jury.

The Court: I think you are prejudicing your case before this jury.

Mr. Talley: We are taking the responsibility for that, sir, and I take an exception to your Honor's statements.

6513

Q. Now, Berger, we will get back to Friday, September 11th, yes, September 11th, 1936. You testified that you got in touch with the defendant Lepke at his office in 200 Fifth Avenue. Do you remember that? A. I do. I walked up there.

Q. What time did you get there? A. After five o'clock.

Q. After five o'clock? A. Some time after five.

6514

Paul Berger—For People—Cross

Q. In the evening? A. That is right.

Q. And how long did you talk with him there?

A. With whom?

Q. Whom do you think?

Mr. Turkus: I object to the form of the question. It is not what he thinks.

The Court: Sustained.

Mr. Talley: Exception.

6515

Q. Whom did you say you met at 20 Fifth Avenue? A. Lepke.

Q. Don't you know that I am asking you how long you talked with him there?

Mr. Turkus: I object to it. There are four questions that could have been done in one.

The Court: Sustained.

6516

Q. How long did you talk with Lepke on that Friday afternoon at five o'clock? A. At where? Up in 200 Fifth Avenue? Is that what you mean?

Q. You know what I mean. I will repeat it—200 Fifth Avenue. A. About five to ten minutes.

Q. Then you came down in the street, didn't you, out of the building? A. That is right.

Q. And then you took the car? A. Cab.

Q. Cab, and you went where? A. Went down to Suffolk and Grand Streets.

Q. Did you stop at Suffolk and Grand Streets? A. We did.

Q. How long did you stay there? A. We got out of the car, out of the cab.

Q. When you got out of the cab, how long did you stay at Suffolk and Grand Street? A. He paid the cab and we started walking. Lepke paid the cab and we walked down.

Q. Where did you walk? A. Down Suffolk Street.

Q. Where did you stop? A. Off the corner of Broome Street he met some man. He told this man to go over to Clinton and Broome and tell Mendy, "I want to see him."

Q. Then did you wait there? A. No, we walked up a bit, turned around on Broome Street. We walked up a bit and we seen Mendy was coming towards us.

Q. Was he coming towards you on Broome Street? A. That is right.

Q. What time would you say that was, 5:30? A. To the best of my recollection it would be.

The Court: You mean estimate?

The Witness: Best of my recollection it would be around—

The Court: Did you time it?

The Witness: I absolutely did not time it.

The Court: We will take the noon recess now until 1:30. Everybody remain seated. Gentlemen of the jury, remember the Court's previous admonitions in all respects. First the witness will leave. Then the jury by the other door. Defendants are remanded.

The Court: Mr. Climenko is asking as to the closing hour. The question of court hours is always for the Court's discretion.

6520

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6521

6522

It is not even reviewable. The Court may sit as early as eight o'clock in the morning and as late at night as it decrees, but the case has been dragging terribly. We are between the devil and the deep sea. I know that this is a case of unusual stress. We have to be mindful of the ability of counsel to try the case with a minimum of strain. We also have to be mindful of the necessity of the jury being able to absorb and digest the testimony, otherwise so much of it is simply lost, but we have got to do one of two things: we have either got to work on Saturdays and close at normal hour of four o'clock or we have got to come here at eight o'clock in the morning and work until four, or we have got to come here at ten o'clock in the morning and work until six. Now my own notion is the best plan is to proceed with normal court hours, ten until four. Everybody is pretty tired by that time and the jury's mind is tired too. That enables the jury to get its daily exercise, not be fatigued, enables counsel to confer with clients before they are taken over to Manhattan, and enables the defendants to get their meal hour in accordance with the time which the Federal authorities prefer. Unless there is objection to this upon the religious grounds, the Court will go along with that idea. Ten to four and a session of ten to four on Saturdays. That is also advisable for this reason: For the jury to be for two days alone means boredom and a temptation to talk about the case in violation of

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6523

the Court's instructions. There is a danger about that. I don't think it should occur. Keep the jury busy six days a week and one day of idleness is just about as much at this time as a patient jury can stand. Think it over.

(Whereupon a recess is taken to 1:30 P. M.)

6524

AFTERNOON SESSION—TRIAL RESUMED

PAUL BERGER, a witness in behalf of The People, resumed the stand and testified further as follows:

Cross-examination by Mr. Talley (continued):

Q. We were speaking about Friday night, September 11th, 1936, after you say you met Mendy Weiss, the defendant Weiss, at Suffolk and Grand Street. A. What is that?

6525

Q. After you met Weiss, as you said, at Suffolk and Grand. A. I didn't say Suffolk and Grand, if you please.

Q. Where did you say you met him? A. On Broome Street.

Q. What other street? A. Off Suffolk Street.

Q. Then you went to eat, didn't you? A. After Lepke told me to point him out to him.

Mr. Barshay: I move to strike that out as not responsive.

The Court: Objection sustained.

6526

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Mr. Barshay: Will your Honor again admonish this witness to answer questions yes or no, if the answer calls for that?

The Court: Denied.

Mr. Barshay: Exception.

Mr. Talley: We take an exception on behalf of the defendant Weiss.

6527

The Court: It should not be required to explain a ruling. I think it is a fair answer to the question, even though not yes or no. We will let it go at that, because it fairly takes in the time that counsel wants.

Mr. Talley: I except.

Q. What restaurant did you go to? A. On Broome Street and Clinton.

Q. Do you know the name of it? A. I do not.

Q. Was it Seltz's? A. I am not sure.

6528

Q. Was it Bloom's? A. Absolutely not Bloom's; that is the candy store around the corner, a hangout for them. It was a restaurant.

Q. Do you know Seltz's Restaurant? A. I am not sure that is the name, but that was a restaurant.

Q. I am asking you do you know the restaurant you say you and Weiss went to? A. I am not sure if that is the name. There is a restaurant on the corner there.

Q. Do you know the name of it? A. I did not know at that time.

Q. How far is that corner on which the restaurant is from Clinton and Delancey Street? A. One block.

Q. And there is a police station at Clinton and Delancy, isn't there? A. That is right.

Q. At what time did you go into this restaurant? A. Around six o'clock I would say.

Q. How long did you stay in the restaurant? A. A couple of hours.

Q. That would bring it up to about 8 o'clock, would it? A. It would.

Q. At eight o'clock you left the restaurant in an automobile? A. No, sir, he went outside and there were some people there that he was talking to. They stood there for some time.

6530

Q. Did you get into the automobile? A. After he spoke to these people.

Q. How long did it take him to talk to these people? A. He spoke to them, not long.

Q. How long did it take him to speak? A. Some time wasted.

Q. What was wasted? A. Speaking to him, that is right.

Q. You were in a hurry to get to Rosen's place to point Rosen out, weren't you? A. I was not.

Q. This corner restaurant, which you say you don't know whether it is Seltz's or not, what kind of a restaurant is it? A. It was—you get regular meals in there.

6531

Q. It was not a cafeteria? A. No, sir, it was not a cafeteria.

Q. It was a regular restaurant, with tables and chairs, where people sit at tables? A. That is right.

Q. You are sure it was on the corner, are you? A. Positive.

Q. Which corner was it on? A. On Broome and Clinton, on the same side as the station house is.

6532

Paul Berger—For People—Cross

Q. On the same side? A. Yes, sir.

Q. On the same block? A. On the same block.

Q. That is the northeast corner, isn't it? A. If that is what it is, I am not definite on east or west.

Q. Do you know? A. No, sir, it is on the same side where the station house is, wherever that is, is it.

Q. Is it toward downtown or uptown? A. What do you mean, uptown or downtown?

6533

Q. I want to know whether it is the uptown corner or the downtown corner, you know which is uptown and downtown in that location? A. Uptown and downtown—that is on the East Side.

Q. You don't know whether it is the north or the south corner? A. I don't; I could tell you the corner it is on. The same side and the same block as the station house, on the corner of Broome and Clinton, whatever you want to call it, go ahead, that is the place.

Q. What time was it when you got into the automobile? A. It was getting dark then.

6534

Q. Would you say it was 8:30? A. Maybe more than that.

Q. Later than that? A. Maybe, I am not definite on time.

Q. Was it about 9? A. I would say it was getting dark.

Q. Would you say it was more than 8:30? Now I am asking you if, to your best recollection, that would be about 9 o'clock.

Mr. Turkus: I object; he has answered it was getting dark. May I point out that

the time was predicated on a surmise, anyway, from the start?

Mr. Talley: I object to that statement on the part of the District Attorney. I am trying to find out from this witness what time he did these things he says.

The Court: If I recall correctly, he testified under cross-examination before that he did not look at any watch or clock. This is purely an estimate.

Mr. Talley: I want his estimate. I am entitled to his estimate. I want to know what time he did the things he claims to have done.

6536

The Court: Of course, that all goes to the accuracy of his memory.

Mr. Talley: I intend to have the jury pass on that. I have a right to probe into this matter and ask under cross-examination,—

The Court: Are you telling the Court?

Mr. Talley: No, I am asserting my rights as I view the law on the subject. It is my duty and obligation.

6537

The Court: There are ways of doing these things.

Mr. Talley: Yes, they are very curious, some of the ways.

The Court: I notice that. I am learning all the time. Proceed.

Q. Are you sure it was getting dark? A. Yes, sir, positively.

Q. Wasn't it dark when you got into the automobile? A. I said it was getting dark.

6538

Paul Berger—For People—Cross

Q. Wasn't it actually dark? A. Well, about. It was not actually dark when I got in there.

Q. Was it dark before you got out of there? A. That is right.

Q. When you drove away from this place? A. What place?

Q. When you drove away from this place were the lights lighted? A. What place?

Q. This restaurant. A. I am not positive.

6539

Q. Were the lights lit in the restaurant before you left? A. I think they were.

The Court: Do you remember?

The Witness: I am not positive.

Q. What kind of a car did you get into? A. I am not definite; I know I got into an automobile.

Q. Do you know what make it was? A. I am not sure.

Q. Do you know what type of car it was? A. I will not say definitely that I remember.

6540

Q. What is your best recollection? A. I don't definitely remember.

Q. Was it—you know what a limousine is? A. An open car?

Q. No, a limousine is a closed car. Was it a closed car type? A. Yes, sir.

Q. You owned a car yourself? A. Yes, sir.

Q. Is your car a closed type or open? A. A closed type.

Q. This car you drove away from this place. Clinton and Broome, whatever corner it was, that was a closed car? A. Yes, sir.

Q. You have been running automobiles for a good many years, haven't you? A. Yes, sir.

Q. You cannot give us any better description of this car you got into when you left the restaurant? A. It was a closed type of car; I am not definite as to the make of the car.

Q. You drove then to Brooklyn? A. Yes.

Q. Where did you get out of that car? A. When I got out?

Q. Where did you stop, when you did stop, in Brooklyn? A. You mean the first stop?

Q. Yes. A. Saratoga and Livonia.

Q. How long did you stay there? A. Who stood there?

6542

Q. Were the lights lit when you got to Saratoga and Livonia? A. Absolutely.

Q. Then it was quite dark? A. Yes, sir, dark.

Q. All the way over to Brooklyn the lights were lit in the street and shops, weren't they? A. Yes, sir.

Q. What time did you get to Saratoga and Livonia? A. To the best of my recollection it would be around 9:30 o'clock.

Q. Then, when did you get out of the car? A. I didn't; Mendy got out of the car.

6543

Q. Did he come back to the car? A. He went into a candy store, and when he came out of the candy store he went in the car.

Q. You are not referring to Rosen's? A. No, sir, the corner of Livonia and Saratoga candy store.

Q. How long was he there? A. A couple of minutes.

Q. Then he came back and got into the car? A. Yes, sir.

Q. You drove from that place to where? A. To Livonia—

6544

Paul Berger—For People—Cross

Mr. Turkus: (Interrupting) I object. That is not the testimony, that he drove.

Q. Who did drive the car? A. Mendy, I told you, I didn't drive the car.

Q I am not asking you,—I am asking you if Mendy did not drive the car. A. Mendy Weiss did drive the car.

Q. Where did you go from there? A. To Livonia and Sackman Street.

6545

Q. What time was it when you got there? A. To the best of my recollection it would be between 9:30 and 10 o'clock; only a few minutes from Livonia and Saratoga to Livonia and Sackman.

Q. When you got there did you both get out of the car? A. We did not. Mendy got out. I saw him talk to Capone, and Capone came back with Mendy and said, "Hello" to me.

Q. Then did he get in the car? A. Yes, sir.

Q. Then he drove some place else? A. Yes, sir, me and Mendy drove away.

6546

Q. Where did you go? A. To some corner on Sutter Avenue.

Q. Did you both get out of the car? A. That is right.

Q. What time was it when you got out of the car around Sutter Avenue? A. It would be around 10 o'clock, I would say. I am not definite about the minutes. I don't remember to the minute. I was not watching time.

Q. The lights were lighted in the shops around Sutter Avenue? A. Definitely, yes.

Q. It is a busy place there? A. I would not say very busy.

Q. There were plenty of people around there on a summer night? A. Yes.

Q. What did you do when you got out of the car? A. Mendy says, "Come on, I will show you where the candy store is, and see if you can see Joe Rosen there."

Q. Then you told us you saw Joe Rosen and pointed him out to Mendy? A. I walked to the opposite side of the candy store and he said, "That is the candy store. See if you can see him." As it happens, Joe Rosen walked out and he happened to fix the papers on the stand and the jars in the window. I said, "That is him."

6548

Q. What time was that? A. As I said before, how long does it take from here to the candy store—a minute or two minutes.

Q. Was it between 9:30 and 10? A. Around 10 o'clock.

Q. After you pointed out Rosen and said, "That is him," what did you do then? A. Then he says to me, "Go back to the car."

Q. After you left Sutter, or wherever you had stopped, where did you go? A. You mean after I pointed him out to Mendy and Mendy came back to the car?

6549

Q. Yes. A. Downtown.

Q. Whereabouts? A. Dropped me off at Broome and Clinton.

Q. He let you off at Broome and Clinton? A. Yes, sir.

Q. Is that the last you saw of him that night? A. That is right.

Q. Then you went to Manhattan, the Borough of Manhattan? A. That is in the Borough of Manhattan, Broome and Clinton, isn't it?

6550

Paul Berger—For People—Cross

Q. You went uptown, didn't you? A. That is right.

Q. Now, at what time was it when you got to Broome and Clinton where you say he let you off? A. Around—To the best of my recollection it would be around eleven o'clock.

Q. Where did you go from there? A. I went to pick my own car up.

Q. Where had you left it? A. I think I left it at 12th Street and Broadway, parked there.

6551

Q. Now, the next thing you heard about Rosen you say was when you read in the Monday morning News that he had been shot? A. That is right.

Q. You knew he was the man you had pointed out? A. Yes, sir.

Q. You did not leave town, did you? A. I did not.

Q. And nobody told you to leave town? A. No, sir.

Q. But you became busy and tried to get Max Rubin out of town? A. I did not.

6552

Q. Nobody at any time told you to get out of town, did they? A. No, sir.

Q. Broadway and 12th Street, you say, you parked your car that night? A. I presume so.

Q. That afternoon? A. That morning, not that afternoon.

Q. You left it there until 11 or 12 o'clock that night? A. Around that time.

Q. Where was your place of business then, in September of 1936? A. I think it was in 714 Broadway.

Q. What street is that? A. Off—I think it was near Washington Place.

Q. How far was your place of business from

12th Street and Broadway, where you say you parked your car? A. About four or five blocks.

Q. Had you ever parked it there, at Broadway and 12th Street, before that day? A. Sure, I think I did.

Q. Why didn't you park it in front of your business? A. The reason for that was I did not want the car to get banged up. Sometimes there was no room to park in front of my place of business.

Q. Wasn't there danger of it being banged up at Broadway and 12th Street? A. That is a parking lot.

6554

Q. Were you in the parking lot? A. I think I was.

Q. You think you were? A. There is a parking lot right on 12th Street off Broadway; that is where the union used to be there at one time.

Q. On this day did you park your car in the parking lot? A. I think I did.

Q. At Broadway and 12th Street? A. I think I did.

Q. You think you did? A. I parked there many times.

6555

Q. What is your best recollection of this particular day, the 11th of September, 1936?

Mr. Turkus: I object to that as repetitious.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. Have you any recollection now that you did park your car in the parking space at 12th Street and Broadway on this day, September 11th? A. I think I did.

6556

Paul Berger—For People—Cross

Mr. Talley: I move to strike out the answer as not responsive.

The Court: Motion denied.

Mr. Talley: Exception.

The Witness: I happen to know the man that owns that lot. The Union used to be over there; park there many times.

Mr. Cuff: May we have this outburst stricken out?

The Court: The supplemental answer is stricken out.

6557

Q. Did you go home directly from this place where you parked your car at 12th Street and Broadway? A. I did.

Q. What time did you get home? A. I cannot definitely say; probably it was after 12.

Q. Do you remember if your wife was home? A. Positively.

Q. Now, when was it you pointed Rubin out to Schlermer? A. It was around the month of September.

6558

Q. September of 1936? A. No.

Mr. Turkus: I object.

Q. What year in the month of September? A. I think it was 1937.

Q. Just about a year after you had pointed Rosen out? A. Yes, sir.

Q. When was it you pointed Rubin out to Seymour Magoon? A. You mean when Mendy told me to point him out to Seymour Magoon?

Mr. Talley: I move to strike out the question he asked and that the witness be directed to answer my question.

Paul Berger—For People—Cross

6559

The Court: Motion denied.

Mr. Talley: Exception.

The Court: I think the witness wants to be enlightened so he can answer you correctly.

Mr. Talley: There is nothing difficult about his answering me correctly when I ask him when he pointed out a man whose life he thought was to be taken.

The Court: You have had the last word. That settles it. But the Court's ruling stands.

6560

Mr. Talley: Exception.

Q. When did you point out Max Rubin to Seymour Magoon? A. Around eight or nine months after that.

Q. Eight or nine months after September of 1937, when you pointed him out to Schlermer?

A. That is correct.

Q. You made the plans on both of these occasions for pointing out Rubin to both of these men?

6561

Mr. Turkus: I object. That is not his testimony.

Mr. Talley: I have a right to ask questions on cross-examination which are not in the testimony at all.

The Witness: I made plans at the direction of Mendy.

Mr. Talley: I move to strike out the latter part.

The Court: Motion denied.

Mr. Talley: Exception.

6562

Paul Berger—For People—Cross

Q. You told us that in the case of Magoon you saw Rubin standing on the other side of the street and you pointed Rubin out to him. Do you remember that? A. That is correct.

Q. Will you tell us again what you told Magoon? A. That Rubin was on the other side of the street.

6563

Q. You stand up and tell us what you did. A. I went over to Magoon, I spotted him 15 or 20 feet away from me, when I saw him on the other side of the street. I walked over to him and I said, "On the other side, the fellow with the stiff neck, standing with another man."

Q. Then you walked past him? A. Who?

Q. Magoon. A. That is right.

Q. You told him so out of the corner of your mouth, just as you are indicating? A. Yes, sir.

Q. You did not want anybody to see you were speaking to Magoon? A. That is right, to a certain extent, yes.

6564

Q. When you were arranging to point Rubin out to Schlermer, you arranged that you and Rubin were to have a meal in the Childs Restaurant? A. That is right.

Q. That was your suggestion, wasn't it, about taking him to Childs Restaurant? That was, nobody suggested that you do that on that particular night, did they? A. No, sir.

Q. That was on your own? A. On my own.

Q. Then you went and you sat with him for about one hour in Childs Restaurant? A. I did.

Q. You had arranged that while you were eating with this man, that Schlermer was to be in the restaurant? A. That is right.

Q. You arranged with him that he would know

it was Rubin because you were going to sit at a table eating with Rubin? A. That is right.

Q. How long did you sit with Rubin in Childs Restaurant? A. I would say about an hour.

Q. You saw Schlermer there? A. Positively.

Q. Did you leave Schlermer behind you when you came out? A. When I walked out with Rubin?

Q. Schlermer was still there? A. That is right.

Q. Then after you got Rubin out of the restaurant, where did you go? A. I left.

6566

Q. You left him there? A. Left him where?

Q. At the restaurant where you had been dining, outside of it. A. I left Rubin?

Q. Yes, did you? A. I did.

Q. When you did that, you knew, you told us, that Rubin was to be killed? A. I did.

Q. Yet you did not hesitate to sit down and eat with that man in Childs Restaurant that night, did you?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Talley: Exception.

6567

Q. And was it after you had pointed him out in the manner you described to Schlermer that you borrowed \$200 from him? A. I did.

Q. And you never paid him back, did you? A. No, sir, I gave that money to Mendy, that money Mendy got.

Q. Not up to this day? A. That money Mendy got.

Q. You have been receiving \$150 a week from

6568

Paul Berger—For People—Cross

the business you conducted at 599 Broadway since June of this year, haven't you? A. I did.

Q. That is \$600 a month? A. Yes, sir.

Q. Have you paid Rubin back that \$200 since June, 1941?

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

6569

Q. Why didn't you pay him back that money you got since June, 1941, since you have been in the Hotel Bossert? A. Pay Rubin back money?

Q. Why didn't you pay back Rubin? A. He did not ask me. Maybe I would not pay him if he did ask me. That is the truth. Maybe I would not. What more do you want to know, anything? Have you anything to show that he gave me \$200? Maybe I would give it to him back and maybe I would not.

6570

The Court: No more of that.

Q. Yes, you said that several times. Berger, you would not hesitate to lie to save yourself from prison, would you?

Mr. Turkus: I object to the form of the question.

The Court: Objection overruled.

A. What is the question?

Q. (Question repeated by reporter.) A. No.

Q. Of course, you would not hesitate to lie to save yourself from the electric chair, would you?

Paul Berger—For People—Redirect

6571

Mr. Turkus: I object to the form of the question. It may not have been made clear to the witness.

The Court: Objection overruled.

A. Maybe I would.

Q. What is your answer? A. I said maybe I would.

Q. Maybe you would or would not? A. Common sense—anybody would probably lie to save themselves from trouble.

6572

Q. That includes you? A. Certainly.

Q. When you pointed Rubin out to Magoon, you knew he was being guarded by policemen? A. I did.

Q. Did it occur to you that if Rubin were shot at, the policemen who were guarding him might also be shot? A. Probably.

Mr. Talley: I have no further questions.

Mr. Rosenthal: My motion is directed along the same line I previously made about the other witness, and as has been outlined in my original motion for a severance. Now I move for the withdrawal of a juror and the declaration of a mistrial, and a severance, on behalf of Capone, on the ground the evidence is prejudicial to his rights.

6573

The Court: Motion denied.

Mr. Rosenthal: Exception.

Redirect examination by Mr. Turkus:

Q. Weiss's lawyer asked you if you would

6574

Paul Berger—For People—Redirect

lie to save your skin and you answered, in substance,— Now, I am asking you did you lie in this case? A. Absolutely not.

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

The Witness: (repeating) Absolutely not.

6575

Q. Weiss's lawyer brought out something about Bloom's candy store. Do you remember? A. Yes, sir.

Q. Did you tell him that that was a hang-out?

A. Yes, sir, the whole mob used to come there.

Q. Tell me who they were—

Mr. Barshay: I move to strike the last answer out on behalf of the defendant Buchalter as not binding on him.

6576

Mr. Talley: May I also make that motion with respect to the defendant Weiss. And, with regard to Bloom's candy store, I was trying to ascertain from the witness whether he had gone into Bloom's or to Seltz's. There is nothing on direct or on cross about this being a hang-out for anybody. I also object on the ground it is not proper redirect examination.

The Court: You mean the restaurant at Broome and Clinton?

The Turkus: Judge Talley inquired of the witness. This was a candy store.

The Court: What address?

Mr. Turkus: I don't know the address. Your Honor may ask the witness. This

Paul Berger—For People—Redirect

6577

is something he elicited on cross-examination and I want to inquire about.

Mr. Cuff: It was as to the identity of the restaurant he went in.

By the Court:

Q. What is the address? A. On Clinton Street, right next to the station house.

Q. Is it on the same block as the restaurant?

A. Certainly.

6578

The Court: Just what is before the Court now? Did Judge Talley move to strike it out?

Mr. Talley: Yes, I do.

The Court: Motion denied.

Mr. Talley: Exception.

Q. Tell me who used to hang out in Bloom's candy store?

Mr. Barshay: I object to that as not binding upon the defendant Buchalter.

6579

Mr. Talley: I object on the ground it is incompetent, immaterial and irrelevant, and not proper redirect examination.

The Court: He can be asked only what persons he saw hanging out there from time to time.

Mr. Turkus: That is it.

Mr. Cuff: And we have an objection to that..

The Court: Objection overruled.

Mr. Cuff: Exception.

A. Mendy—Farvel.

6580

Paul Berger—For People—Redirect

Q. Do you mean Farvel Cohen? A. Yes, sir. Charlie the Bug.

Q. That is Charlie the Bug, Charlie Workman, known as Charlie the Bug? A. Yes, sir. Toots—

Q. Was Toots Feinstein? A. Yes, sir. Al Tannenbaum. Red Levine.

Q. Do you remember any more? A. Farvel, Specht.

Q. Do you know his right name or other alias? A. Spiek.

6581

Q. Was that big or little Farvel? A. Big Farvel. His name is Siegel.

Q. Do you remember any others? A. A fellow named Big Mannie; we used to call him Culky Mannie.

Mr. Barshay: I move to strike it out as not binding on the defendant Buchalter, in no way involving him.

The Court: Motion denied.

Mr. Barshay: Exception. I move for the withdrawal of a juror and the declaration of a mistrial.

6582

The Court: Motion denied. Gentlemen of the jury, the Court will charge you at the proper time as to the application to persons to whom a specific point of the evidence applies or may be considered as applying. The reason the Court cannot charge at this time is that the Court rules, up to date, only on what has been connected up to date. It does not know what yet may be connected with other defendants and those who have been directly involved on specific points of evidence. I trust you are of sufficient intelligence to

follow all this evidence in all its ramifications and can properly apply it in accordance with the Court's instructions at the proper time.

By Mr. Turkus:

Q. When Lepke's lawyer questioned you about eating with Mendy Weiss in a restaurant before going over on your mission with Mendy, you said that Farvel ate there with both of you, do you remember? A. Yes, sir.

6584

Q. By Farvel, do you mean Farvel Cohen? A. Yes, sir, Farvel Cohen.

Q. Weiss' lawyer brought out about a concern known as the Berger Clothing Company? A. Yes, sir.

Q. You told him that the real president was Mendy? A. Yes, sir.

Q. Was Mendy Weiss the real president of the Berger Clothing Company? A. That is right.

Mr. Cuff: I object to that as calling for a conclusion and improper. He cannot say that.

6585

The Court: He cannot say that. That is a conclusion, but he can state who he understood to be the real boss.

Mr. Cuff: I object to that, too.

The Court: Objection overruled. He has given the impression, from cross-examination, that he was only a paper officer.

Mr. Cuff: May I take an exception to your Honor's statement and suggestion.

6586

Paul Berger—For People—Redirect

Q. Further, in response to Weiss' lawyer's question, you said that on paper you were a partner, do you recall that? A. Yes, sir, on paper.

Q. Did you have knowledge about who was actually getting the money from the Berger Clothing Company?

Mr. Talley: Objected to as incompetent, immaterial and irrelevant.

6587

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Do you know who was actually getting the money?

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

A. That's right, Mendy.

By the Court:

6588

Q. Did you see him get it? A. I gave it to him, plenty of times.

By Mr Turkus:

Q. Lepke's lawyer asked you about making a visit to a law office at 51 Chambers Street, Manhattan, and you responded, didn't you, that you went there by instructions of Mendy Weiss? A. That is correct.

Q. In substance, you were asked by counsel for Lepke, "Did you tell it to any lawyer in that building, or any building in this universe,

Paul Berger—For People—Redirect

6589

that Weinstein was the one who told Danny Fields to leave town, did you? A. Can you tell me the name of the lawyer?", and the Court pressed you for a yes or no answer? A. That is right.

Q. By whose instructions did you go up to see that lawyer? A. By Mendy's.

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

6590

Q. Did you tell that particular lawyer that Weinstein was the one who told Danny Fields to leave town, did you tell that to the lawyer? A. That is right; they were the instructions of Mendy that Danny Fields was up there, too. He told me to tell one thing with another that was not so. That is what we done.

Q. You mean when you were up there Danny Fields was also up there? A. Yes, sir; I did not want to go there but Mendy forced me to tell him about everything that was going on in the union office, tell about the bonus he got from Hillman for \$25,000 for Lepke after the strike.

6591

Mr. Barshay: I move to strike that out.

The Court: That is not responsive, the latter part. Strike it out.

Mr. Barshay: I ask that the jury be instructed to disregard it.

The Court: So instructed.

Mr. Barshay: Will your Honor admonish this witness so he will understand not to make speeches from this witness stand?

6592

Paul Berger—For People—Redirect

The Witness: That is what happened.

The Court: I have repeatedly admonished him. I admonish him again to just answer questions and no more.

Q. Answer these questions if they can be answered yes or no, answer them yes or no. At the time that you were up to the lawyer's office was Danny Fields there—this particular lawyer at 51 Chambers Street?

6593

Mr. Barshay: I object on the ground it has already been answered two or three times.

The Court: Objection sustained.

Q. Do you know of your own knowledge who sent Danny Fields to the lawyer's office?

Mr. Talley: I object to that as incompetent, immaterial and irrelevant.

The Court: It calls for a yes or no answer. Objection overruled.

6594

Mr. Talley: Exception.

A. Yes, sir.

Q. Who was it? A. Mendy Weiss.

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

By the Court:

Q. Were you there? A. I was. I know what was told, too.

Paul Berger—For People—Redirect

6595

Q. You heard it? A. I was there. Whatever I was to say was what Danny had to say. That was done for the purpose to scare off—to tell him to come across with the money—that is what it was done for.

Mr. Barshay: I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Hadn't you better move to strike out the answer?

6596

The Court: Counsel hesitates— The Court, on its own motion, strikes out the latter part of the answer as not responsive, and instructs the jury to disregard it. The motion is denied for a mistrial.

Mr. Barshay: Exception.

Q. Were you asked this question by counsel for Lepke and did you make the following answer, at page 1844:

"Q. Did you ask Mendy to drive you to where your car was? A. I did.

"Q. He refused? A. He had to see somebody."

6597

Mr. Cuff: I object to that as already part of the record.

The Court: Objection overruled. I have allowed both sides to do it within reason. The Court is really fair, notwithstanding what you say.

Q. Did you, in substance, make those answers in reply to questions I just read to you? A. What do you mean?

6598

Paul Berger—For People—Redirect

Q. I mean by that, did Mendy Weiss tell you when you asked him to take you to where your car was parked, after you had come back to the East Side, did he refuse, saying he had to see somebody? A. That is correct.

Q. Did he tell you who that somebody was? A. No, sir.

6599

Q. One of the lawyers, I don't remember which one it was, asked you whether or not \$2,000. was received by you from Weinstein. Were you asked that by one of the lawyers on cross-examination? A. Yes, sir.

Q. Where did that \$2,000. go to?

Mr. Talley: I object to that as incompetent, immaterial and irrelevant; not proper redirect.

6600

The Court: This element of the examination was the subject of caution by the Court at the time. Strictly speaking, the Court was compelled to go into considerable latitude in indulging counsel for the defense in that line of questioning. But you will recall that the answers of the witness were that he pleaded his constitutional privilege, because those matters were included in an indictment now pending against him in New York County. So that does not permit of this question. The objection is sustained.

Mr. Barshay: I move to strike out the testimony of this witness with respect to Buchalter from the time he last saw the defendant Buchalter, as he claims, in June of 1937, on the ground that there is no

Paul Berger—For People—Recross

6601

connection between that, directly or indirectly, and it is not, therefore, binding on the defendant Buchalter.

The Court: I do not want to repeat each time I deny that kind of a motion the reason why it is denied, purely as a matter of procedure at this time, but the jury will be properly instructed in the course of the trial at the proper time. The motion is denied.

Mr. Barshay: Exception.

6602

Recross examination by Mr. Talley:

Q. This Bloom's candy store which you spoke about, how many times were you in there? A. Plenty of times.

Q. Plenty? A. Yes, sir, that is correct.

Q. You were one of those who hung out there with others you described? A. Yes, sir.

Q. This was within the block, right next door to the police station? A. Yes, sir.

Q. You have seen a good many policemen from the police station in Bloom's candy store?

A. In uniform; I don't know plainclothesmen.

Q. You say that on occasions policemen in uniform were in the candy store? A. Yes, sir, when I went in.

Q. You saw them there frequently? A. Now and then.

Q. What do you mean by "now and then"?

A. Well, I did not always see policemen in uniform there all the time when I walked in. Sure, I saw policemen in there in uniform, police.

Q. You knew some of the detectives from the Clinton Street station, didn't you? A. I did.

6603

6604

Paul Berger—For People—Recross

Q. You never saw a plainclothesman in Bloom's candy store? A. I probably did, once in a while.

By the Court:

Q. Did they hang out there, or just make purchases and go out? A. They did not hang out. They probably came in and bought cigarettes.

6605

Q. I mean, they were not members of the crowd? A. No, absolutely not.

Mr. Talley: I object to your Honor's questions as leading and suggestive to this witness.

The Court: Strike out the word "members".

Q. I mean, they did not associate with the crowd? A. Not as I know of.

Q. Did you ever see them do that? A. No.

By Mr. Talley:

6606

Q. What do you mean by your answer, "No", that you did not see them associate with the others? A. Yes, sir.

Q. Could you get anything to eat in this candy store, sandwiches? A. Yes, sir.

Q. Did they have a soda fountain? A. Yes, sir.

Q. Did they serve coffee? A. Yes, sir.

Q. Did you ever see any plainclothesmen or uniformed policemen eating sandwiches at the fountain or taking coffee? A. Yes, sir.

Q. When you said uniformed men, you meant

Albert Tannenbaum—For People—Direct

6607

to exclude plainclothesmen? A. I did not; I maybe knew one or two of them.

Q. Your testimony is you frequently saw in this candy store that has been referred to as Bloom's, which is next to the Clinton Street police station, you frequently saw there both uniformed policemen and plainclothesmen? A. The ones I knew. I did not know all the plainclothesmen in the house, though.

Q. Did you see policemen in uniform in the candy store? A. Yes.

6608

Q. Did you see plainclothesmen, whom you knew to be policemen, in the candy store? A. I did.

ALBERT TANNENBAUM, residing in Brooklyn, New York, called as a witness in behalf of The People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

6609

Q. How old are you? A. 35.

Q. Where were you born? A. Nanticoke, Pennsylvania.

Q. Will you raise your voice so the last juror can hear you? Are you married? A. Yes, sir.

Q. Have you a child? A. Yes, sir.

Q. How old is your child? A. Five years.

Q. When you were a young boy did your parents move from Pennsylvania to New York City? A. Yes, sir.

Q. Do you know whether they took up resi-

6610

Albert Tannenbaum—For People—Direct

dence on the East Side of Manhattan? A. Yes, sir.

Q. Do you know on what street? A. On Orchard Street.

Q. Did they, when you were young, move to Brooklyn? A. Yes, sir.

Q. In what section of Brooklyn? A. The Brownsville section.

Q. Do you know what street in Brownsville they took up their residence? A. Yes, sir, Powell Street.

6611

Q. Did you go to the public school system in Brooklyn? A. Yes, sir.

Q. What public school did you go to? A. Public School 150 and Public School No. 84.

Q. How far did you go in Public School No. 150? A. I think it was to 6-A.

Q. Did you complete your public school education in Public School No. 84? A. Yes, sir.

Q. Did you graduate from public school? A. I did.

Q. From public school did you go to high school? A. Yes, sir.

6612

Q. What high school did you attend? A. The Bushwick High School.

Q. How long did you attend the Bushwick High School? A. About two or two and a half years.

Q. After that did you get your first job? A. Yes, sir.

Q. Do you remember how old you were when you got your first job? A. I was about 16.

Q. Do you remember with whom you got your first position? A. Yes, sir.

Q. Who employed you? A. The National Cloak and Suit Company.

Albert Tannenbaum—For People—Direct

6613

Q. What kind of a company was that? By that I mean what business were they engaged in? A. A mail order house.

Q. What kind of a job did you get in this mail order house? A. Stock boy.

Q. How long did you work as a stock boy for the National Cloak and suit company? A. About a year.

Q. At that time did your father own and operate a hotel up-State, at Rock Hill, New York? A. Yes, sir.

6614

Q. From Decoration Day to Labor Day, where did you work? A. At my father's place.

Q. By your father's place do you mean that hotel at Rock Hill, New York? A. Yes, sir.

Q. Can you remember what your next job was? A. The next job I was a haberdashery salesman.

Q. Do you remember the name of your employer? A. Yes, sir.

Q. What was his name? A. Bernstein.

Q. Did he operate this haberdashery shop under some firm or trade name? A. He did.

6615

Q. Do you remember the trade name? A. Yes, sir, the College Shop.

Q. Where was the College Shop in which you were employed as a haberdashery salesman located? A. Broadway and 113th Street.

Q. In Manhattan? A. Yes, sir.

Q. How many years did you work at this College Shop in the Borough of Manhattan, on Broadway? A. About three or four years.

The Court: Please speak loudly.

Mr. Turkus: It is important that everybody hears this testimony.

6616

Albert Tannenbaum—For People—Direct

Q. After you worked in this haberdashery store for a period of time you told the jury, did you get another job? A. I did.

Q. Do you remember the name of that boss? A. Yes, sir.

Q. What was his name? A. Buzen.

Q. And the first name? A. "D."

Q. What business was Buzen in? A. Paper and twine business.

6617

Q. Where was his place located? A. On Blake Avenue, East New York.

Q. By East New York, you mean the East New York section of Brooklyn? A. Yes, sir.

Q. What type of work did you do in this paper and twine business? A. I delivered orders and I took orders.

Q. Would a description of salesman and delivery man fit that job? A. Yes, sir.

Q. How many years did you work in the paper and twine business for Buzen? A. For about five years.

6618

The Court: Just keep your voice up so that the last juryman will hear you.

Q. After your father had owned Rock Hill, that is, the hotel in Rock Hill, did he thereafter own and operate a place known as Loch Sheldrake Country Club? A. Yes, sir.

Q. Where was the Loch Sheldrake Country Club which was owned and operated by your father located? A. Loch Sheldrake, New York.

Q. After you got through working in this paper and twine business, did you go to help your father during the summer season? A. I did.

Albert Tannenbaum—For People—Direct

6619

Q. Did that season extend from Decoration Day until Labor Day? A. Yes, sir.

Q. Now, was this Loch Sheldrake country club a large place? A. Yes, sir.

Q. What did it consist of? A. Consisted of a hotel, cabaret, bar, bowling alley, barber shop, soda fountain.

Q. Did that have a swimming pool? A. It had a lake.

Q. There was boating on the lake? A. Yes, sir, boating and bathing.

6620

Q. Was it a public casino and cabaret? A. Yes, sir.

Q. Did it have all those facilities which you have described to the jury? A. Yes, sir.

Q. Was it well patronized? A. Yes, sir.

Q. You say you worked from Decoration Day till Labor Day for your father at the Loch Sheldrake Country Club? A. Yes, sir.

Mr. Cuff: May we have the time?

Q. How old were you then, do you remember? A. About twenty— Twenty-five or so.

6621

Q. Now, coming back to the hotel which your father operated at Rock Hill, New York, did you meet a man at that hotel by the name of Shapiro? A. Yes, sir.

Q. What was Shapiro's first name? A. Jack Shapiro.

Q. Did you know Jack Shapiro under any other name? A. Yes, sir, I did.

Q. What name? A. Charlie Gurrah.

Q. Did you become friendly with Charlie Gurrah Shapiro? A. I did.

6622

Albert Tannenbaum—For People—Direct

Mr. Barshay: I object to counsel for The People leading. May the witness testify himself?

The Court: That appears to be a question you ask the Court. Make your objection in proper form.

Mr. Barshay: I object to it as leading.

The Court: Sustained as leading.

6623

Q. Did you see Charlie Gurrah Shapiro frequently at the Rock Hill Hotel your father owned and operated? A. Yes, sir.

Q. Did you talk with him? A. Yes, sir.

Q. And did he talk with you? A. Yes, sir.

Q. Can you remember what year it was that you first met Charlie Gurrah Shapiro? A. About 1925 or so.

Q. Now, when your father operated this Loch Sheldrake Country Club, did Shapiro patronize the facilities there? A. He did.

Q. Did you see him frequently? A. Yes, sir.

Q. Did you talk to him? A. Yes, sir.

6624

Q. And did he talk to you? A. Yes, sir.

Q. Did you become friendly with him? A. Yes, sir.

Q. Now, through your acquaintance with Charlie Gurrah Shapiro, did you meet other people? A. I did.

Q. Where did you meet these other people? A. In the casino, my father's place.

Q. Were these other people patrons of the casino? A. Yes, sir.

Q. Were they there in company with Gurrah? A. Yes, sir.

Q. Who did you meet through the acquaint-

ance with Charlie Gurrah Shapiro in your father's casino at the Loch Sheldrake Country Club? A. I met Harry Greenberg, I met Lepke, I met Shimmy, Curley, Toots Feinstein, Farvel.

Q. When you say "Farvel," Farvel who? A. Farvel Cohen.

Q. When you say "Lepke," who do you mean? A. Louis Buchalter.

Q. And he is known also as Lepke? A. Yes, sir.

Q. Now, this man Greenberg, was he known by any other name? A. Yes, sir.

Q. What name? A. Green.

Q. Tootsie Feinstein, was that his real name? A. Sam Feinstein.

Q. The man whom you call Curley, what was his full name? A. Holtz.

Q. Hymie Holtz? A. Yes, sir.

Q. When you met those individuals whose names you have related to the jury, through Gurrah, did you talk together? A. Yes, sir.

Q. Did you speak to Lepke? A. Yes, sir.

Q. Did he speak to you? A. Yes, sir.

Q. And the others whose names you mentioned, did they talk to you? A. Yes, sir.

Q. Did Lepke and the others patronize the Loch Sheldrake Country Club?

Mr. Barshay: I object unless we have the time set.

The Court: Set the time.

Q. When was that you first met Lepke? A. About 1930 or 1929.

Q. Are you referring to the time when you

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first met him at the Loch Sheldrake Country Club? A. Yes, sir.

Mr. Barshay: I move to strike out all the testimony with reference to a time prior thereto, as not binding on the defendant Buchalter.

The Court: Did I understand the date previously mentioned was 1925?

6629

Mr. Barshay: Yes, that is as to Shapiro.

The Court: Motion denied. It means nothing so far, but I do not know what it may lead to. That is why the motion is denied.

Mr. Barshay: Exception.

Q. When you saw Lepke at the Loch Sheldrake Country Club whom did you see with him?

A. I saw Charlie Gurrah with him, Hymie Holtz, Farvel, Toots.

Q. By "Farvel," you mean Farvel Cohen? A. Yes, sir.

6630

Q. And "Toots," that is Feinstein? A. Yes, sir.

Q. And other people? A. Yes, sir.

Q. Do you remember the names of any others that you saw Lepke with? A. A few more, a fellow named "Lady Lucy."

Q. At the time you saw Lepke in company with those people, was he a patron at the Loch Sheldrake Country Club and some of its facilities? A. Yes, sir.

Q. Answer this yes or no—did you, after you

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had made the acquaintance of Lepke, meet Harry Greenberg in Manhattan? A. Yes, sir.

Q. Where was it you had the meeting with Harry Greenberg? A. About 1931.

Q. Do you recall where it was or when it was that you met Greenberg in Manhattan?

Mr. Barshay: Objected to as immaterial and not binding on Buchalter.

The Court: Objection overruled.

Mr. Barshay: Exception.

6632

Q. Where? A. Around Broadway and 31st Street.

Q. Answer this yes or no: Did you have a talk with Greenberg? A. Yes, sir.

Q. After that talk with Greenberg did you go to work for any of the defendants in this case? A. Yes, sir.

Q. Which one? A. Lepke.

Q. What was your salary? A. \$35 a week.

Q. Now, without stating the nature of your services, was your work performed at that time in the clothing district? A. In the ladies' garment district.

6633

Q. And without stating the nature of your work, did you receive general assignments from Lepke? A. Yes, sir.

Q. Now, did there come a time when you got a specific assignment from Lepke? A. Yes, sir.

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

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Q. Now, after you followed the specific assignment, did you meet Lepke?

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Q. Was that by instruction? A. Yes, sir.

6635

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Whose instructions? A. Lepke's—whoever gave me authority—Lepke, Gurrah.

Mr. Talley: I object. That is incompetent and not binding on the defendant Weiss.

The Court: Objection overruled.

6636

Mr. Talley: Exception.

Q. Where did you see Lepke after you had performed the specific assignment given to you?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Wherever his office was located.

Q. Where was the office located from time to time? A. There was one office Broadway and 8th Street, another office at 19th Street between

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5th and 6th Avenue, another office at 22nd Street and 5th Avenue, and an office at 200 5th Avenue.

Q. Where did you spend your time when you were in between assignments? A. Up in the office.

Q. Whose office? A. Lepke and Gurrah.

Q. Did you meet other employees of Lepke at the office when you were there in between assignments?

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant.

6638

The Court: Objection overruled.

Mr. Barshay: Exception.

Mr. Rosenthal: My objection is that it calls for a conclusion.

The Court: That ground is good. Objection sustained.

Q. In between assignments, when you were at the office of Lepke, who did you see there with Lepke? A. I saw a whole lot of fellows who worked for him.

Q. Who did you see there? Can you name some of them? A. I saw Charlie Workman, Toots.

6639

Q. Is that Charlie the Bug? A. Yes, sir.

Q. Toots? A. Yes. Farvel Cohen, Mendy Weiss, Shimmy.

Q. Do you know Shimmy's right name? A. Yes, sir.

Q. What is it? A. Sidney Salles.

Mr. Barshay: Will you please fix the time?

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Q. Who else did you see there? A. I used to see Danny Fields there and Max Rubin; and Bartfield.

Q. What was Bartfield's right name? A. I knew him as Bartfield.

Q. Did you know his first name, what he was called? A. Izzy. I saw Murray Weinstein there, Sam Katz.

Q. Was there a man named Feinberg you saw there? A. Feinberg? A. Yes, Yegel Feinberg.

6641

Q. A man named Cravatz? A. Yes, sir, Louis Cravatz.

Q. Did he use any other name? A. Louis Kay.

Q. Do you know Danny Fields' right name? A. Yes.

Q. What was it? A. Irving Friedman.

Q. Did you know a man named Oscar Frankel? A. Yes, sir.

Q. Did you ever see him there? A. Yes, sir.

Q. Did your salary go up while you were in the employ of Lepke? A. Yes, sir.

6642

Q. Did it go up when you got specific assignments? A. Yes, sir.

Q. How much did it go after your first raise? A. I got \$50 a week.

Q. Did you go up from \$50? A. Yes, sir.

Q. Up to what? A. \$75.

Q. Did your pay continue to go up? A. Yes, sir.

Q. What was the next raise after \$75? A. \$100.

Q. From \$100 did it go higher? A. Yes, sir.

Q. To what? A. \$125.

Q. Now, was this your weekly salary? A. Yes, sir.

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6643

Q. In August, 1936, did you get a specific assignment, without stating what that assignment was? A. Yes, sir.

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant to this issue.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. From whom did you get that specific assignment?

6644

Mr. Barshay: I make the same objection.

The Witness: I got it from Lepke through Mendy Weiss.

Mr. Barshay: I move to strike out the answer as hearsay.

Mr. Talley: I make the same motion.

The Court: Strike out the answer.

Q. While you worked for Lepke, from whom did you receive orders? A. I received orders from Lepke, Charlie Gurrah, and in later years I took orders from Mendy Weiss.

6645

Mr. Barshay: I move to strike that out as not binding on the defendant Buchalter.

Mr. Talley: I make the same motion, on the ground it is not binding on Weiss.

The Court: He has not stated whether or not those orders were in the course of his employment, the usual employment procedure.

Mr. Turkus: I mean to do that step by step.

6646

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The Court: The question in the form it is asked is objectionable and sustained.

Q. Did you, in the course of your employment by Lepke, receive orders from Lepke? A. Yes.

Q. Did you, in the course of your employment by Lepke, receive instructions to obey others? A. Yes, sir.

6647

Q. Who were the others that Lepke told you to obey? A. Charlie Gurrah, and in later years, Mendy Weiss.

Q. Was it in the regular course of your employment that you received those orders?

Mr. Talley: I object to that as a conclusion.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. In the regular course of your employment did you receive those orders? A. Yes, sir.

6648

Q. In August of 1936, through the course of your regular employment, did you receive an order with reference to a specified assignment, without telling us what that assignment was? A. Yes, sir.

Mr. Barshay: I object to that as not binding on Buchalter. He has not said that he did receive it from Buchalter.

The Court: We have not gotten to that yet.

Mr. Barshay: Exception.

Q. From whom did you receive the assignment?
A. From Mendy Weiss.

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Mr. Barshay: I move to strike out the answer as not binding on the defendant Buchalter.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. Now, in the regular course of your employment did you have instructions from your employer to report back to him? A. Yes, sir.

Q. Did you, after you had performed specific assignments, report back to your employer? A. Yes, sir.

6650

Q. To whom did you make your report? A. Whoever gave me the assignment.

Q. Referring to the assignment given in August of 1936, without stating what the assignment was, tell the Court and jury, did you perform your assignment? A. I did.

Mr. Cuff: Objected to as a conclusion.

The Court: Objection overruled.

Mr. Cuff: Exception.

Q. Merely to fix the time, did you hear of the death of one Joseph Rosen? A. Yes, sir.

6651

Q. On the Friday before his death, where were you?

Mr. Barshay: I object to counsel leading.

The Court: Objection overruled.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I was in New York.

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Q. At that time had you performed the specific assignment you had been given? A. I did.

Mr. Barshay: Objected to as immaterial.

Mr. Barshay: Exception.

Q. When you were in New York did you go some place? A. Yes.

6653

Q. Where did you go? A. I went up to the office to report.

Q. To report to whom? A. Lepke.

Q. What office were you up to to report to Lepke, where was it? A. That was at No. 200 Fifth Avenue.

Q. Do you know the name of that office? A. Yes, sir.

Q. What was the name of it? A. Raleigh Manufacturing Company.

6654

Q. When you went up to that office to make your report, as you stated to the jury, whom did you see in the office? A. I saw different people that worked there. Then I walked into one of the rooms and I saw Lepke.

Q. Speak loudly. Were you seated somewhere in the office? A. Yes, sir, I walked in.

Mr. Barshay: I object to that as leading.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. (The Court) Did you sit down or stand up? A. I sat down.

Q. When you were seated there did you see any of the defendants in the office? A. Yes, sir.

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6655

Q. Which defendant did you see? A. Lepke.

Q. When you saw Lepke did you see who he was with? A. Yes, sir.

Q. Who was he with? A. Max.

Q. Max who? A. Max Rubin.

Q. What were Lepke and Max Rubin doing when you saw them there together? A. They were talking.

Q. Now, at the time Lepke was talking to Max Rubin did you observe his face, his demeanor?

6656

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Q. What did you observe in connection with his face? A. I saw he was—

Mr. Cuff: I object.

The Court: Objection overruled.

Mr. Cuff: Exception.

The Witness: (continuing) His face was flushed; he looked angry.

6657

Mr. Cuff: I move to strike that out.

The Court: Motion denied.

Mr. Cuff: Exception.

Q. When you saw Lepke's face flushed, what was Lepke doing? A. He was talking to Max; he was yelling at Max.

Q. By "Max," who do you mean? A. Max Rubin.

Q. Was that a usual occurrence, from your observation, to see Lepke with his face flushed? A. No, sir.

6658

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Mr. Barshay: I move to strike out the answer.

The Court: Motion denied.

Mr. Barshay: Exception.

6659

Q. Now, when Lepke's face was flushed, what did you hear him say to Rubin, in substance, the best you can recall? A. He was yelling at Max and he was saying—I heard him tell Max he gave Rosen some money to go away and he comes back; stays away a little while and then he comes back and sneaks back into a candy store. Lepke was hollering. He said, "There is one son-of-a-bitch who will never go down to talk to Dewey about me." And Max was trying to quiet him down.

6660

Q. Repeat that and talk loudly. I did not hear you. A. He was yelling at Max and telling Max he could not set up with Rosen. He gave him some money to go away and he stayed away a short time and he came back, and he sneaked back into the candy store after he told him to go away. He said he has got to take it up with him, and there is one son-of-a-bitch that will never go downtown and talk to Dewey about him.

Q. That is what Lepke said to Rubin? A. Yes.

Q. Did Rubin answer Lepke? A. Yes, sir.

Q. What was the tone of Rubin's voice? A. Max was quiet, he was trying to calm him down; he was saying, "Take it easy, take it easy," he said, "I will handle Joe Rosen," he said, "he is all right."

Q. When Rubin said to Lepke, "Take it easy, I will handle Rosen," what did Lepke say to

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Rubin—you said when Rubin spoke in a lower tone of voice, saying to Lepke, "Take it easy, I will handle Rosen," when Rubin said that to Lepke, what did Lepke say? A. He said no. He told him that before and that is the end of it.

Q. When he said, "You told me that before," did he use any curse words? A. Yes, sir.

Q. Tell us what he said? A. He told him, he said "that he is fed up with that son-of-a-bitch and he will take care of him. That is one fellow that will never go downtown."

6662

Q. And after Lepke said that did Rubin make some response to Lepke? A. Yes, sir.

Q. What did he say? A. Max said, "All right, give me a chance, let me run up to Murray and see, maybe Murray could straighten the whole thing out."

Q. When he said "Murray", did he say the last name? A. Murray Weinstein.

Q. When Rubin asked for an opportunity to see Murray Weinstein, what did Lepke say? A. Lepke said, "Go ahead if you want to see him, go ahead, but make sure to come back and let me know what happened."

6663

Q. You had seen Murray Weinstein before? A. Yes, sir.

Q. Had you seen him before that with any of these defendants? A. Yes, sir.

Q. Which one? A. I saw him with Lepke.

Q. Was he a union official, Murray Weinstein? A. Yes, sir.

Q. Had you ever seen Weinstein at any office in which Lepke was present? A. I saw him in all the offices.

Q. Did Rubin leave Lepke after that talk? A. Yes, sir.

6664

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Q. Were you waiting for him to finish? A. Yes, sir.

Q. After he finished what did you do? A. I went to Lepke and told him what I did.

Q. Without saying what you told Lepke, did you make a report of the specific assignment you had been given in August of 1936? A. Yes, sir.

Mr. Climenko: I object to that as having no bearing on this matter.

6665

The Court: Objection overruled.

Mr. Climenko: Exception.

Q. Were you there in the office pursuant to your instructions to make a report? A. Yes, sir.

Q. In the course of your employment by Lepke, to make a report? A. Yes, sir.

Q. After you made your report to Lepke, did Lepke say anything to you? A. Yes, sir.

Q. What did he say? A. He said, "All right, go ahead."

Q. Some days later were you in the office of Lepke again? A. Yes, sir.

6666

Q. And is that the place that you were frequenting in between specific assignments? A. Yes, sir.

Q. While you were hanging around the office, did you see any one of these defendants come in? A. Yes, sir.

Q. Which one? A. Mendy Weiss.

Q. Mendy Weiss? A. Yes, sir.

Q. Was Lepke there at the time? A. Yes, sir.

Q. What did you see Weiss do?

Mr. Barshay: I object to it unless we have the time set.

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The Court: Try to fix the time.

Mr. Turkus: This is several days after Friday, September 11, 1936, so the time is fixed.

Mr. Talley: Let the witness fix it.

Mr. Turkus: It is fixed by the witness.

Mr. Talley: Let the witness fix it.

Mr. Turkus: Your Honor, may I continue my direct examination?

Mr. Talley: I object to the question unless the time is fixed, not by the District Attorney but by the witness.

6668

The Court: Just what do you mean by "several"?

The Witness: What is that?

The Court: About how many days?

The Witness: Three or four days.

Q. The question pending without answer, I believe, is the one that when Weiss came in was Lepke in the premises, in the office? A. Yes, sir.

Q. What did you see Weiss do? A. Weiss walked in and he said to Lepke, "O.K.!"

6669

Q. He said to Lepke, "O.K.!", in the form of a question? A. Yes, sir.

Q. When Weiss said, "O.K.!", in the form of a question to Lepke, did Lepke answer him? A. Yes, sir.

Q. What did he say? A. He said, "Was everything all right?"

Q. What did Weiss say? A. Weiss said, "Everything is O.K., but that son-of-a-bitch, Harry Strauss," he said. "I gave him strict orders not to do any shooting, and", he says, "after I shot Rosen," he says, "he was laying

6670

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on the floor, Harry Strauss started shooting him."

Mr. Barshay: I move to strike out the answer as not binding on the defendant Buchalter.

The Court: Denied.

Mr. Barshay: Exception.

6671

Q. After Weiss told Lepke that Harry Strauss stuck his nose in, as you have related to the jury, and shot Rosen after he was on the floor, did Lepke say anything? A. Yes, sir.

Q. What did he say to Weiss? A. He said, "All right, what's the difference as long as everyone is clean and you got away all right?"

Q. "As long as everyone is clean and you get away all right"? A. Yes, sir.

Q. After Lepke said that, did he do anything with relation to Mendy Weiss, do you know? A. Yes, sir.

6672

Q. What did he do? A. He patted him on the back. He said, "All right, go ahead." He said, "I will see you later."

Q. After Weiss had that talk with Lepke and he got the pat on the back, where were you? A. I was sitting there.

Q. Did Weiss speak to you? A. Yes, sir.

Q. What did he say to you? A. He walked over to me and he said, "What are you doing?" I said, "Nothing." He said, "Come on, let's go out and get some coffee."

Q. "Let's go out and get some coffee"? A. Yes, sir.

Q. Did you go out with Mendy Weiss to get coffee? A. Yes, sir.

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Q. Where did you go with him? A. Walked into a restaurant on Fifth Avenue right off 23rd Street.

Q. Do you know the name of that restaurant on Fifth Avenue off 23rd Street that you and Weiss went to? A. Yes, sir.

Q. What was it? A. Child's.

Q. Did you and Mendy Weiss have coffee together in Child's restaurant? A. Yes, sir.

Q. While you were having your coffee did he talk to you? A. Yes, sir.

6674

Q. What did he say to you?

Mr. Barshay: I object to it, not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

A. He said to me, "When did you get back?" I told him, "I got back just a few days ago."

Q. When you said you had gotten back a few days ago, did he ask you a question about the specific assignment that you had up there?

6675

Mr. Barshay: I object to counsel leading.

The Court: Overruled.

Mr. Barshay: Exception.

A. Yes.

Q. Without telling us what the answer was, did you give him an answer? A. Yes, sir.

Q. And after you spoke about the specific assignment, did Weiss talk to you further? A. Yes, sir.

Q. What did he say to you?

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Mr. Barshay: I object to it, not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

A. He said, "Yes, I just got through with a piece of work myself."

6677

Mr. Barshay: I move to strike out the answer as not binding on the defendant Buchalter.

The Court: Denied.

Mr. Barshay: Exception.

Q. When Weiss said to you, "I just got through with a piece of work myself," did you answer him? A. Yes, sir.

Q. What did you say to him? A. I said, "Yes, I just heard you say it."

Mr. Barshay: Object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

6678

Q. You were in the middle of an answer there. Will you complete your answer? A. I said, "Yes, I just heard you tell Louis about it."

Q. Was the name of Strauss mentioned by Weiss in that conversation?

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. Yes, sir.

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Q. Did you ask Mendy any questions about Rosen in that talk? A. Yes, sir, I did.

Q. What did you say to him or ask him?

Mr. Barshay: I object to it. It is not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

A. I asked Mendy who Rosen was.

Q. What did he say? A. He says, well, he was some truck—

6680

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Speak up. What did Mendy say when you asked him who Rosen was? A. Mendy told me this Rosen is some fellow used to be in the trucking business and that he was threatening to go down to Dewey and talk about Lep.

Mr. Barshay: Is that the answer complete now?

6681

The Witness: Yes, sir.

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Tannenbaum, heretofore, have you ever been convicted of a crime? A. No, sir.

Q. You did commit crimes, didn't you? A. Yes, sir.

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Q. Did you engage in throwing stink bombs?

A. I did.

Q. Sluggings? A. Yes, sir.

Q. Strike breakings? A. Yes, sir.

Q. And did you, together with others participate in the crime of murder? A. I did.

Q. Together with others, how many crimes of murder did you participate in? A. Six.

Q. Six? A. Yes, sir.

6683

Q. In addition to the six murders in which you were a participant, did you, together with others, help dump the body of a dead man? A. Yes, sir.

Q. For disposition? A. Yes, sir.

Q. And concealment? A. Yes, sir.

Q. The six murders, who were the victims of the six murders? Name them. A. One was Ashkenaz, Yuran, Diamond—

Q. You mean Mersh Diamond?

The Court: What Diamond?

The Witness: Morris.

6684

Q. Morris or Mersh Diamond? A. Plug Shuman, Whitey Friedman, and Harry Greenberg.

Q. And the case in which you helped to dump the body into a lake after the murder, was that victim's name Solomon Goldstein? A. Yes, sir.

Q. In the Ashkenaz case, what part did you play in the murder? A. I did the shooting.

Q. You did the shooting? A. Yes, sir.

Q. That meant you were the trigger man in that one? A. Yes, sir.

Q. In the Yuran case, what part did you play in that murder? A. Drove the car.

Q. That made you the wheelman, is that right? A. Yes.

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Q. In the Plug Shuman murder, what part did you play in that? A. Drove the car.

Q. That made you the wheelman? A. Yes, sir.

Q. In the Greenberg murder? A. I covered the get-away car.

Q. That is covering the get-away car of the man who actually fired the shot? A. Yes, sir.

Q. In the Whitey Friedman murder, what part did you play? A. I fingered him.

Q. And in the Merish Diamond, what part did you play? A. I fingered him.

6686

Q. Tannenbaum, after District Attorney O'Dwyer came into office, you were arrested, were you not? A. Yes, sir.

Q. Do you remember when you were arrested? A. About the latter part of March.

Q. 1940? A. Yes, sir.

Q. Were you brought to the District Attorney's office for questioning? A. Yes, sir.

Q. Were you there questioned by two Assistant District Attorneys? A. Yes, sir.

Q. Was one of the assistants Mr. Heffernan? A. Yes, sir.

6687

Q. Was the other myself, Turkus? A. Yes, sir.

Q. When you were questioned by Assistant District Attorneys Heffernan and Turkus, did you raise your constitutional rights not to incriminate yourself?

Mr. Barshay: I object to counsel leading, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. Yes, sir.

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Q. Did you answer questions? A. Just my name and address, then I refused to answer.

Q. To other questions, did you say you had constitutional rights and refused to answer? A. Yes, sir.

Q. Were you subsequently taken up-State? A. Yes, sir.

Q. Were you lodged in an institution up-State? A. Yes, sir.

6689

Q. Who was the District Attorney of the county in which that institution was and in which you were lodged? A. Mr. Deckelman.

Q. When was it that you spoke to Mr. Deckelman in which the name of District Attorney O'Dwyer was mentioned? A. About the first or second Sunday in May.

Q. The first or second Sunday in May, 1940? A. Yes, sir.

Q. After you spoke to District Attorney Deckelman after the name of Judge O'Dwyer was mentioned, were you visited by Judge O'Dwyer? A. Yes, sir.

6690

Q. Did you have a talk with Judge O'Dwyer? A. I did.

Q. Thereafter, did Judge O'Dwyer come up with Assistant District Attorney Turkus and have a talk with you? A. Yes, sir.

Q. How many days after that was it before you went to a Grand Jury in Brooklyn, how many days after that talk with Judge O'Dwyer and Assistant District Attorney Turkus? A. Oh, about a week.

Q. From that institution up-State were you taken to Brooklyn? A. Yes, sir.

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6691

Q. Where were you put in Brooklyn? A. At a hotel.

Mr. Talley: What hotel?

Mr. Turkus: At a hotel.

Q. Do you know whether you were brought down by a court order? A. Yes.

Q. From that time on have you been in the custody of the New York City police authorities? A. Yes, sir.

6692

Q. Have you at various times in that custody of the New York City Police Department been confined in a hotel? A. Yes, sir.

Q. Have you been confined there with other men? A. Yes, sir.

Q. Who were the other men that you have been confined with from time to time? A. Sol Bernstein, Ike Sykoff, Abe Reles.

Q. In that hotel were there police officers? A. Yes, sir.

Q. Were they armed? A. Yes, sir.

Q. Have the hotel arrangements been one with a peep hole and shackles on the door? A. Yes, sir.

6693

Q. Do you know whether or not there have been mirror set-ups in the corridors? A. Yes, sir.

Q. And police officers armed? A. Yes, sir.

Q. Since you had the talk with Judge O'Dwyer have you testified for the People of the State of New York in the Plug Shuman murder? A. Yes, sir.

Q. Have you also testified for the People of

6694

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the State of New Jersey against Charlie, the Bug? A. Yes, sir.

Q. And have you been before a Grand Jury in Southern California? A. Yes, sir.

Q. You have not testified before any Grand Jury in the Mersh Diamond murder, have you? A. Yes, I did.

Q. Had you in the Whitey Friedman matter? A. No, sir.

6695

Q. How long were you on the payroll of the defendant?

Mr. Rosenthal: I object unless he specifies which defendant.

Mr. Turkus: The defendant who had him on the payroll.

The Court: Overruled. Buchalter, you mean?

Mr. Turkus: Yes, that is right.

A. About nine years.

6696

Q. Were you on the payroll up to the time of your arrest? A. Yes, sir.

Q. What was the top salary that you had gotten? Was it \$125. a week? A. Yes, sir.

Q. During the course of your employment, was your salary at one time reduced? A. Yes, sir.

Q. What was it reduced to? A. At one time it was reduced to \$80. a week.

Q. What was your salary at the time of your arrest? A. \$100.

Q. \$100. a week.

Mr. Turkus: The witness is offered for cross-examination.

Mr. Barshay: I move for the withdrawal of a juror and the declaration of a mistrial on the ground of prejudice.

The Court: Denied.

Mr. Barshay: Exception. Will your Honor give us a few minutes to get our notes together?

The Court: How long do you wish?

Mr. Barshay: Ten minutes.

6698

The Court: It is now half-past three.

Mr. Barshay: Until what time does your Honor desire to work?

The Court: You see, that is all up to the way the increased working schedule is arranged. I have tried to see if counsel could not be agreeable, although I have the power to fix it.

Mr. Rosenthal: Will your Honor give us a few minutes to see whether we all cannot agree along the line of what your Honor suggested? I am perfectly willing.

6699

The Court: Is there any one here who does not go to his office on Saturday?

Mr. Barshay: We will work Saturday.

The Court: That is very much better. We will work then only until four o'clock daily and that will give you a chance to read your minutes, the stenographers to prepare the daily copy, to prepare for the next day, the jury to get its exercise, and also the jury to work on Saturday so as not to be bored by two days' inactivity, so it works out very nicely all along.

6700

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Mr. Talley; Can we work until one o'clock on Saturday, straight session?

The Court: No.

Mr. Turkus: I ask your Honor to open this examination for a few questions I omitted.

The Court: There is no sense in coming back for fifteen minutes. I was willing to give counsel until tomorrow morning to start the cross.

6701

Mr. Turkus: Let me finish my direct.

The Court: Finish your direct.

By Mr. Turkus:

Q. Do you know the third defendant in this case, Capone? A. Yes, sir.

Q. When did you first meet Capone? A. About 1938.

Mr. Rosenthal: Will you keep your voice up?

6702

The Witness: About 1938.

Mr. Rosenthal: You can talk loud enough, can't you?

Q. Where did you meet Capone? Try to imitate me.

Mr. Rosenthal: I object to it, if it is 1938, upon the ground that it is immaterial, incompetent, irrelevant to this issue.

The Court: I cannot tell, but if it im-

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6703

material, no harm done. See what it leads to. Overruled.

Mr. Rosenthal: I respectfully except.
(Pending question read.)

A. At Saratoga and Livonia Avenue.

Q. Saratoga and Livonia Avenue, that is Brownsville, isn't it? A. Yes, sir.

Q. Between the time when you met him at Saratoga and Livonia Avenue until the time of your arrest, how many times have you seen Capone?

6704

Mr. Rosenthal: I object to it upon the ground it is immaterial, two years after the alleged killing in this case.

The Court: Overruled.

Mr. Rosenthal: I respectfully except.

A. It was a good many times.

Mr. Rosenthal: I do not hear you.

The Witness: I said a good many times.

6705

Q. Try to estimate the number of times. A. Maybe a hundred times.

Q. Maybe a hundred times, is that what you said? A. Yes, sir.

Q. With whom did you see Capone on these frequent times that you have seen him? Whom was he with?

Mr. Rosenthal: I object to it upon the same ground previously urged.

The Court: Overruled.

6706

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Mr. Rosenthal: I respectfully except to the Court's ruling.

A. I used to see him with Harry Strauss, with Bugsy Goldstein, Abie Reles, Mendy Weiss, Farvel.

Q. And where did you see him on these occasions with these individuals whom you have named?

6707

Mr. Rosenthal: I make the same objection.

A. On the corner.

Q. Was that Harry Strauss one Pittsburg Phil? A. Yes, sir.

Q. Did you ever hear him called "Pep"? A. Yes, sir.

Q. "Big Harry"? A. Yes, sir.

Q. And Farvel, what was his last name? A. Cohen.

Q. Is that the Farvel Cohen you have been talking about in your earlier testimony? A. Yes.

6708

Q. And Bugsy Goldstein, was that Martin Bugsy Goldstein? A. Yes, sir.

Q. And Reles, was that Abie Reles? A. Yes, sir.

Q. Where did you say you saw Capone with these men on the various occasions?

Mr. Rosenthal: I object to it. It is repetitious. The very question itself is improper in form.

The Court: He just stated.

Mr. Turkus: I did not hear the answer.

The Court: He said it was Saratoga and Livonia Avenue.

Mr. Rosenthal: Mr. Turkus wants it repeated again. He said Saratoga and Livonia. Did you hear it?

Mr. Turkus: I hear you.

Mr. Rosenthal: The fourteen jurymen have heard it, too, Saratoga and Livonia.

Q. Was Saratoga and Livonia Avenue a hang-out in Brownsville? A. Yes, sir.

6710

Mr. Rosenthal: Isn't that repetitious, Judge? I object to the question on the ground that it is repetitious which is the word frequently used by the District Attorney towards defense counsel.

The Court: And also by the Court. It is repetitious.

Mr. Rosenthal: That is right.

The Court: That is Rose Gold's?

Mr. Rosenthal: Does your Honor sustain the objection?

The Court: Yes, repetitious.

Mr. Turkus: Having been sustained on the ground of repetition, I am through with the witness.

Mr. Rosenthal: I move to strike out the entire testimony upon the ground it is based upon actions of this defendant two years subsequent to the alleged killing. It is immaterial. It is only for one purpose, to prejudice this jury.

The Court: Denied.

Mr. Rosenthal: I respectfully except.

6711

6712

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In line with my previous motions, I move for the withdrawal of a juror and the declaration of a mistrial upon the grounds which I urged at the time I moved to strike out.

The Court: The usual ruling. Denied.

Mr. Rosenthal: And the usual exception, sir.

6713

The Court: Everybody kindly remain seated. Gentlemen of the jury, please don't discuss the case, let nobody talk to you about it, keep your minds open. We will resume at ten o'clock tomorrow morning, and I think that from now on the case will make more speed so far as the length of testimony of witnesses is concerned. Please do not discuss the case, let nobody talk to you about it, keep your minds open, and read nothing in the newspapers, and follow the other previous instructions.

Let the witness go.

The jury out the other door.

6714

The defendants are remanded.

(Thereupon adjournment was taken to November 13, 1941, at 10:00 A. M.)

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6715

Brooklyn, N. Y., November 13, 1941.

TRIAL RESUMED

The Court: One of counsel for the defense (Climenko) approached the bench and hands up a paper to the Court.

I say that because I have seen a similar notation on the record, in reviewing the testimony of Bernstein:

“(The District Attorney approached the bench and conferred privately)” —which casts suspicion on the Court, which was not justified.

6716

Mr. Climenko: Oh, no, your Honor. Then I withdraw it.

The Court: The Court now reads the paper and asks to have it marked for identification.

(Received and marked Defendants' Exhibit V for identification.)

The Court: I will tell counsel the Court refuses to do these things over the bench surreptitiously. If you have any motion to make, make it in open court. The jury will be excused while you make it.

6717

(The jury thereupon left the courtroom.)

The Court: Are all of the defendants represented by counsel?

Defense Counsel: Yes.

Mr. Climenko: If your Honor pleases,

6718

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the defendant Buchalter now moves for the withdrawal of a juror and the declaration of a mistrial by reason of prejudice created by the manner of the conduct of the direct examination of the witness Tannenbaum, which direct examination was conducted in such a manner as to convey to the jury the belief that the defendant Buchalter directed that witness to commit other crimes, including murder.

6719

The Court: Do any of the other counsel wish to be heard?

Defense Counsel: We join in the motion.

Mr. Rosenthal: The motion I made has nothing to do with that particular phase. My motion was made and denied upon an entirely different ground, and that was the ground contained in my original motion for a severance, namely, that the permission of all this testimony against two defendants in reality, and not connected with the defendant Capone, was highly prejudicial to his interest and warranted the granting of the original motion for a severance on his behalf. That has been, your Honor, all my motions throughout in so far as concerns the witnesses who were unconnected with him and were permitted to testify.

6720

The Court: Both motions are denied.

Mr. Rosenthal: Of course, the motion incorporates the application for the withdrawal of a juror on the ground that I mentioned.

The Court: Referring to the matter just spoken of by the Court, a matter which directly puts the Court in an entirely false position in the event of a conviction and in the event of a review of the record by the Court of Appeals, I found last night in my nightly work of reviewing the evidence in its many ramifications that in the minutes, at page 943, is the following:

“By Mr. Rosenthal:

6722

“Q. Did you accidentally meet Fat Cooperman?

“Mr. Turkus: Will you wait just a minute, sir?” Then, parenthetically: “Mr. Turkus appears before the bench and talks privately to the Judge, without the hearing of the jury.” Then another parenthesis: “(Mr. Turkus resumes his place in the court-room.)” Then comes the question:

“Q. Did you accidentally meet Fat Cooperman that night and take him home?”

6723

Now, when I read that in the record I did not recognize it as the record of the trial, but in putting my thought to it it did come back to me that at one time when a question was asked and no answer had been made, and no objection had been made, there was an interruption by Mr. Turkus approaching the bench and handing up some sort—or attempting to show

6724

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the Court some sort of a confidential police report concerning the murder or alleged murder of Fat Cooperman. The Court paid no attention to it whatever, and Mr. Turkus resumed his seat.

6725

It also brought to mind that at various times during the trial the Court, in perfectly good faith and in courtesy to counsel for the defense, has permitted counsel for the defense, and without any record being made in the minutes, to step over to the bench and present papers—some of them subpoenas—and also for various other reasons. The Court, feeling that its integrity could not under any circumstances be put in issue, innocently permitted these practices to go on. From now on, however, in view of this at page 943, the Court will allow no counsel to approach the bench at any time during the course of this trial for any purpose whatever, no matter how innocent it may be.

6726

There is just another matter: In reviewing and epitomizing the record for the purpose of the jury charge, there has come to the attention of the Court that the case has been beset by quarrels between counsel upon the asking of questions and upon the interposition of objections, quarrels which disturbed the orderly procedure of the court—quarrels which were heated and personal, and sometimes, in fact, many times, have caused the Court to sit by, unable to interrupt or restore order until the quarrels wore themselves out. These

are largely omitted from the record. Now, this results in the following situation: That remarks thereupon made by the Court which had relation to the disorder are made by the record to appear to have application to the question and answer or objection which preceded it. There is no other way I can see in which the Appellate Court could otherwise interpret that record.

For instance, as a concrete example, at page 1024:

6728

“Q. You left from the Coffee Pot, didn’t you? A. Wait a minute, wait a minute. I got him now, sir. I got him very clear now, very clear, very clear now.”

The colloquy which naturally followed that outburst from the witness was extensive. I know why the stenographer could not take it down, because more than one talked at once. But every word of the quarrel between counsel is omitted. However, we do find this:

6729

“The Court: When the Court speaks, everybody stop. The Court is not trying to appear superior but that is the Court’s position it has to maintain.”

That remark by the Court is made to appear to have reference to the “Q. & A.” just repeated, which would put the Court in a ridiculous position, because the Court could not sensibly make such a remark in connection with “Q. & A.” At the same time, I know perfectly well how an Appellate Court will look at that unless

6730

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it is explained. I am instructing the stenographers from now on to put on the record every word of every quarrel and colloquy between counsel. If, because it jumbles too much, or because more than one talk at the same time, it cannot be accurately transcribed, the stenographer will record, "Disorder between counsel."

6731

Mr. Climenko: May I note an exception to the part of your Honor's comment regarding any motive on my part to be surreptitious, and also, on behalf of the defendant Buchalter, I except to your Honor's comment in so far as—

The Court: Now that the jury is not here, let me have the slip and I will read it. The motion should have been made from where you stand.

Mr. Climenko: Here is the motion; it was made word for word (handing paper to the Court).

6732

The Court: (reading) "The defendant Buchalter moves for the withdrawal of a juror and the declaration of a mistrial by reason of prejudice created by the manner of the conduct of the direct examination of the witness Tannenbaum, which direct examination was conducted in such a manner as to convey to the jury the belief that the defendant Buchalter directed that witness to commit other crimes, including murder."

The Court cannot entertain a motion in a case other than on the other side of the rail.

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6733

Mr. Climenko: May the record now show that the intention of counsel was only to preserve time; that counsel, with respect to the motion, could not make it before the jury without doing that which the motion attempts to avoid the harm of.

The Court: All you had to do was to ask to have the jury excused. I am only concerned about the record, because this Court has done its utmost from the very start of the trial to handle a tough situation with fairness to both sides. It will stand by the court record as to everything and anything it says, but it wants no false record.

6734

Bring in the jury.

(The jury thereupon returned to the courtroom.)

ALBERT TANNENBAUM, a witness on behalf of The People, resumed the stand and testified further as follows:

6735

Cross-examination by Mr. Barshay:

Q. Will you please answer the questions the same way you answered Mr. Turkus, without volunteering anything? A. Yes, sir.

Q. Is that all right? A. Yes, sir.

Q. You admitted participation in six murders, didn't you? A. Yes, sir.

Q. How many were in the County of Kings? Just give me the number. A. Three.

6736

Albert Tannenbaum—For People—Cross

Q. Have you been arraigned on any indictment with respect to any of those three murders? A. Have I been indicted, you mean?

Q. To your knowledge, have you? A. Not as I know of.

Q. Speak up. A. I don't know.

Q. Have you ever been arraigned in any court to plead to an indictment? A. In Kings County?

Q. Yes, for murder. A. No, sir.

6737

Q. To your knowledge, have you been indicted in California? A. I don't know.

Q. Have you ever been before any Court to plead to any indictment in California? A. No, sir.

Q. How many murders did you participate in in Sullivan County? A. One.

Q. Did you gain immunity? A. Two, rather.

Q. Did you gain immunity for the one? A. I don't know.

Q. You testified before the Grand Jury which sat up in Sullivan County, and you did not sign a waiver of immunity, isn't that so? A. Yes, sir.

6738

Q. That is the Ashkenaz case? A. Yes, sir.

Q. So you gained immunity in that case, didn't you? A. I don't know.

Q. Well, we will leave that for the Court. You are indicted in Sullivan County for the Yuran case? A. I don't know if I am indicted.

Q. You were never called to trial in that? A. No, sir.

Q. Since your arrest? A. No, sir.

Q. Have you been called for pleading in Sullivan County to any indictment? A. Yes, sir.

Q. Which one? A. The Ashkenaz case.

Q. That is the one you testified to before a Grand Jury? A. Yes, sir.

Q. That is the one where you entered the Grand Jury without signing any paper whatever? A. Yes, sir.

Q. Without signing any waiver of immunity? A. Yes, sir.

Q. Give me the number of sluggings you participated in over the period of years you said you did. A. Oh, I could not give you the exact number.

6740

Q. About. A. Maybe fifty.

Q. How many? A. Maybe fifty.

Q. Have you ever been in jail for any of them? A. No, sir.

Q. How many stench bombs did you throw? A. I don't know.

Q. About how many? A. I could not give you the exact amount.

Q. Well, approximately. A. Maybe one hundred.

Q. Have you been in jail for any of that? A. No, sir.

Q. How many times did you throw acid and destroy merchandise? A. I never did.

6741

Q. When you went out to California did Abie Reles go with you? A. Yes, sir.

Q. Was it in an aeroplane? A. Yes, sir.

Q. You stayed there in California? A. Yes, sir.

Q. Then you came back? A. Yes, sir.

Q. Did you make another trip to California? A. I did.

Q. While this jury was being chosen did you make a trip to California? A. I don't know that.

6742

Albert Tannenbaum—For People—Cross

Q. When is the last time you flew to California? A. About six weeks ago.

Q. You were not an eye-witness to the Dutch Schultz killing? A. No, sir.

Q. You, did not participate in that? A. I did not.

Q. But you were a witness in the trial of that case? A. Yes, sir.

Q. You met the defendant Buchalter, I believe you said, sometime in 1930? A. Around that time.

6743

Q. Or was it 1931? A. About 1930 or 1931.

Q. May I refresh your recollection if I can. In the Grand Jury in California you testified in August of 1940, do you remember? A. Yes, sir.

Q. Do you know the exact date? A. No, sir.

Q. Did you there testify—perhaps I may refresh your recollection—and say you knew the defendant Buchalter for nine years? A. I don't remember, I might have.

Q. That would approximately make the meeting between you and Buchalter in 1931?

6744

Mr. Turkus: I object to the form of the question. That is arithmetic.

The Court: Objection overruled.

Q. Isn't that so? A. About 1931.

Q. Going back to your days in Brownsville, how many years did you live there before 1931? A. About 20 years.

Q. In 1925, approximately six years before you met the defendant Buchalter, were you a stool pigeon for Detective Barney Rabinsky? A. I was not.

Q. Didn't you turn Abie Reles in to Barney

Albert Tannenbaum—For People—Cross

6745

Rabinsky when Abie Reles shot Marcelle Ryan in the breast? A. I did not.

Q. Isn't that what made you and Abie Reles enemies? A. No, sir.

Mr. Turkus: I object. There is no such testimony.

Mr. Barshay: I am asking him if there is.

The Court: Objection overruled.

6746

Q. What? A. No, sir.

Q. At that time in Brownsville or East New York were you a member of a gang? A. No, sir.

Q. Did you know Meyer Shapiro? A. I did.

Q. Was he a gangster? A. Yes, sir.

Q. Did you know his brother Irving Shapiro?

A. Yes.

Q. Was he a gangster? A. Yes, sir.

Q. Did you know his brother Willie Shapiro?

A. Yes.

Q. Was he a gangster? A. Yes, sir.

Q. Didn't you associate with them? A. I knew them but I did not associate with them.

6747

Q. You lived with Meyer Shapiro, didn't you?

A. I did not.

Q. Did you ever live at 92nd Street, Manhattan? A. I did not.

Q. With Meyer Shapiro? A. I did not.

Q. Did you live there with Louis Kauffman?

A. No, sir.

Q. Known as Kaufy? A. I don't remember.

Q. You don't know Kaufy? A. I never lived with him.

Q. Did you know Kaufy? A. If I see him maybe I would.

6748

Albert Tannenbaum—For People—Cross

Q. You pointed a gun at him on Vermont Street? A. I did not.

Q. Were you ever in the 92nd Street apartment with Kauffman and Meyer Shapiro, and Meyer Shapiro's girl? A. Not as I know.

Q. Didn't you live there the night Meyer Shapiro was shot? A. No, sir.

Mr. Barshay: We will come to that.

Mr. Turkus: I ask that that be stricken out, Mr. Barshay's remark.

6749

The Court: I did not hear it.

Mr. Barshay: I withdraw it. Maybe I will come to it later.

Q. You knew Alex Eisenberg? A. Yes, sir.

Q. Do you know what business he was in? A. Yes, sir.

6750

Q. On the 30th of November 1931, at 290 Junius Street, in the City of New York, or rather, in the County of Kings, City of New York, did you point a gun at this Eisenberg and take from him at the point of this gun one diamond ring and one diamond pin? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. You had a gun there? A. Yes, sir.

Q. This was your own act, wasn't it? A. Yes, sir.

Q. The gun was loaded? A. Yes, sir.

Q. You intended to kill him if he resisted? A. I did not.

Q. Did you point the gun at him? A. I did.

Q. Did he make resistance? A. No, sir.

Q. That was your friend, wasn't he? A. My friend?

Q. Yes, Eisenberg. A. No, sir.

Albert Tannenbaum—For People—Cross

6751

Q. Did you know him before the hold-up? A. Yes, sir.

Q. After the hold-up did you threaten to kill him if he prosecuted you? A. I did not.

Q. He did not prosecute you? A. I did not see him after that.

Q. Did you send word to him? A. No, sir.

Q. But he did not prosecute you?

Mr. Turkus: Objected to as already answered.

6752

The Court: Objection overruled.

Q. Did he? A. What is that?

Q. He did not prosecute you? A. No, sir.

Q. Although he did sign an affidavit in the Magistrate's Court charging you with what you just admitted? A. I don't know what he signed.

Q. It was read to you? A. I don't remember whether it was read to me; I don't remember what was read to me.

Q. You knew the Shapiros at that time? A. Yes, sir.

Q. Where did you see the Shapiros in those days? A. Around Brownsville section, East New York.

6753

Q. On what particular corner? A. Sutter Avenue.

Q. Sutter and where? A. Around Hinsdale Street.

Q. Is it not a fact that the Shapiro gang was a rival to Reles's gang at that time? A. They were enemies.

Q. The Shapiro brothers were pimps—

Mr. Turkus: I object. We are trying

6754

Albert Tannenbaum—For People—Cross

this indictment; we are not trying rival gangs in Brownsville now.

By the Court:

Q. Did you associate with the Shapiros? A. I knew them, but I did not associate with them.

The Court: Objection sustained.

6755

Mr. Barshay: Exception. I have a right, I think, to show he did associate with the Shapiros despite—

The Court: If you can show association, then you have a right to show they were pimps.

Mr. Barshay: I am trying to, but if I am shut off, I cannot.

The Court: I am not shutting you off, I am telling you what you can do. I have ruled on a specific question.

By Mr. Barshay:

6756

Q. Do you recall the night Meyer Shapiro was shot? A. Yes, sir.

Q. The first time, do you recall that? A. No, sir.

Q. Did you know the Earbender? A. No, sir.

Q. Did you know a man named Leo Goldstein? A. No, sir.

By the Court:

Q. Were the Shapiros in your crowd? A. No, sir, they were in Brownsville.

Albert Tannenbaum—For People—Cross

6757

Q. Then Reles's crowd was in Brownsville, too? A. Yes, sir.

Q. There was a feud between the two? A. As far as I know.

By Mr. Barshay:

Q. You were a friend of a man named Leo Goldstein, known as the Earbender? A. I was not.

Q. Speak up. A. I was not.

6758

Q. Do you know who I am speaking about when I speak of Leo Goldstein, also known as the Earbender?

Mr. Turkus: I object. It does not make any difference. He says he was not his friend; there was no association.

The Court: Objection overruled.

Q. Do you know who I am speaking about when I refer to Leo Goldstein, also known as the Earbender? A. I don't know who you mean.

Q. You never heard the name? A. No, sir.

6759

Q. You never saw him at the apartment in 92nd Street? A. No, sir.

Q. Were you ever there? A. No, sir.

Q. Did you ever visit Meyer Shapiro there? A. No, sir.

Q. You said you did recall when Meyer Shapiro was shot. A. When he was killed?

Q. I said shot. A. No, sir.

Q. Maybe he was killed, I don't know. Do you recall that night? A. Which night?

Q. The night Meyer Shapiro was shot and killed. A. Yes, sir.

6760

Albert Tannenbaum—For People—Cross

By the Court:

Q. Were you there? A. No, sir.

By Mr. Barshay:

Q. Did you know Icehy Belsky? A. No, sir.

Q. Did you know Fat Kupperman then? A. No, sir.

6761

Q. Did you know Dave Needleman then? A. No, sir.

Q. Didn't you drive those men whom I have just mentioned to the corner of Elton Street and Glenmore Avenue, in pursuance of a tip you got from Meyer Shapiro's brother? A. No, sir.

Q. Did you know at that time the Reles gang was responsible for the shooting of Meyer Shapiro? A. No, sir.

Mr. Turkus: I object. He just said he did not do something. That would be an implication that he did it, not matter how he answered it.

6762

The Court: It is hearsay. Objection sustained.

Mr. Barshay: Exception.

Q. Did you pull up in a car to that corner, Elton and Glenmore, and you, personally, puncture tires of an Oldsmobile standing at that corner? A. I did not.

Q. Did you see DeFeo there? A. I don't know him.

Q. Or Buggsy Goldstein? A. No, sir.

Q. While you were puncturing the tires, is it not a fact that men who were with you in the

car, whom I mentioned, Fat Kupperman, Icehy Belsky, and Dave Needleman, fired in the direction of that car, killing DeFeo? A. I did not know that at that time.

Q. Didn't you shoot—the crowd of men, not you personally—right then and there, Buggsy Goldstein, in the nose? A. I did not.

By the Court:

Q. Were you in the car? A. No, sir.

6764

Q. Did you know Buggsy? A. No, sir.

By Mr. Barshay:

Q. You did not know Buggsy? A. No, sir.

Q. You never knew Buggsy? A. I knew him from the name in the newspaper, but I never met him. I never saw him.

Q. I take it you never met Reles either? A. At that time I didn't know them.

Q. Did you know them later? A. Yes, sir.

Q. When did you know them? A. I met them in 1936.

6765

By the Court:

Q. Buggsy? A. Yes, sir.

Q. Part of his nose was already deformed, wasn't it? A. I don't know.

Q. He had a flat nose, didn't he? A. He had a funny nose.

By Mr. Barshay:

Q. The year I am speaking of, Tannenbaum, is 1932. A. I did not know them at that time.

6766

Albert Tannenbaum—For People—Cross

Q. You lived in Brownsville? A. I did.

Q. You associated with them? A. Yes, sir—associated with whom?

Q. With the Shapiros. A. Yes, sir, I knew them.

Q. You knew they were a rival gang of Reles'? A. I knew they were fighting, yes.

The Court: Mr. Barshay, may I interrupt you? This may take a little time to clarify the situation.

6767

By the Court:

Q. Was there a feud on about the pinball racket? A. I don't know what they were feuding about.

Q. Was there a feud between the Shapiros and the Reles gang because the Reles gang muscled in on Brownsville under the pinball racket? A. I don't know.

Q. You don't know? A. No, sir.

6768

Q. Were you connected with the pinball racket? A. No, sir.

By Mr. Barshay:

Q. You knew of the reason for the feud between them? A. No, sir.

Q. Why, it was for the control and the protection of houses of prostitution in Brownsville? A. I did not know anything about it.

Q. You knew then that the Shapiros and the Reles mob were both pimps? A. No, sir.

Q. Didn't you know the girl over whom the feud started?

Mr. Turkus: I object. That is an obvious attempt to try to prejudice the jury on matters that this witness did not know anything about.

The Court: Objection overruled.

Mr. Barshay: I have an objection to Mr. Turkus's remarks.

Q. You knew the girl over whom this feud started? A. I did not.

Q. Do you know her now? A. No, sir.

6770

Q. Did you come to the conclusion at any time that the Reles gang was the more powerful one? A. I did not.

Q. (The Court) You knew that two of the Shapiros were wiped out? A. Yes, sir.

Mr. Barshay: Three, if your Honor please.

The Court: All three?

Mr. Barshay: All three, yes, sir.

By Mr. Barshay:

6771

Q. Did you and a man named Kennedy and his wife enter a bar and grill of Leo Goldstein, known as the Earbender, in Long Island City, and shoot him? A. I did not.

Q. You were at a meeting at the Lido Hotel on West 61st Street, uptown, at any time? A. The Lido?

Q. Yes. A. No, sir.

Q. What is the name of the hotel? A. You just said Lido.

Q. Is there any hotel you were up at a meeting? A. No, sir.

6772

Albert Tannenbaum—For People—Cross

Q. With the Shapiro brothers and Reles, when peace was attempted to be made? A. No, sir.

Q. Didn't you kill then, Mr. and Mrs. Kennedy in Long Island City, in a furnished room in Long Island City? A. I did not.

Q. You know whom I speak about? A. I knew George Kennedy.

Q. And you knew his wife? A. Yes, sir.

Q. They ran a cabaret, didn't they? A. I don't know if he ran a cabaret.

6773

Q. You know they were killed, don't you? A. Yes, sir.

Q. They were your friends, weren't they? A. I knew them, yes, sir.

Q. Did you know them at the time the Earbender was killed?

Mr. Turkus: I object. That does not go to the credibility of this witness; it is far afield from this indictment.

The Court: The defense is entitled to much latitude.

6774

Mr. Turkus: All right.

Q. Did you? A. What?

Q. Did you know them when the Earbender was killed? A. I don't know. When was the Earbender killed?

Q. Did you know that Kennedy, George and his wife, when they were arrested for the killing of the Earbender? A. I don't think so.

Q. Do you know that within a few weeks after that they were both killed in their furnished room in Long Island City? A. I know they were killed.

Albert Tannenbaum—For People—Cross

6775

Q. You had nothing to do with the killing, did you? A. No, sir.

Q. Did you know Chinky Sherman? A. No, sir.

Q. You never heard of Chink Sherman? A. I heard of him.

Q. In Montecello? A. I never met him.

Q. Did you help bury him? A. I did not.

Q. Was he buried on your friend's farm? A. Yes, sir.

Q. Was that in 1935? A. I don't know the year.

6776

Q. Did you know Maurice Carillot? A. No, sir.

Q. Did you ever hear of him? A. No, sir.

Q. Did you ever work as a strong-arm man in a gambling house? A. Yes, sir.

Q. That was later, on your own? A. No, sir, I was sent there to work.

Q. Just answer yes or no.

Mr. Turkus: That does not call for a yes or no answer. That was not given in the form of obtaining a yes or no answer.

6777

Mr. Barshay: I move to strike it out as not responsive.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. Was this gambling house known as the Riviera, not in New Jersey, but in Sullivan County? A. That was my father's cabaret.

Q. The Riviera? A. Yes, sir.

Q. Was that a gambling house? A. No, sir.

Q. Where did you work as a strong-arm man

6878

Albert Tannenbaum—For People—Cross

in a gambling house? A. I worked in Florida and I worked in Saratoga.

Q. You worked in Florida every winter? A. No, sir, not every winter.

Q. How many winters? A. Two.

Q. Which winters did you work there? A. The winter of 1935 and the winter of 1936.

Q. How many other times had you been in Florida without working? A. Without working?

Q. Yes. A. Maybe three times.

6879

Q. Was it '37?

Mr. Turkus: I object to the form of the question as confusing. Do you mean 1937?

Mr. Barshay: Yes.

A. Yes, I was there in 1937.

Q. You spent the whole winter there? A. Of 1937?

Q. Yes. A. Yes, sir.

Q. Without working? A. I worked there in 1937.

6880

Q. You said in 1935 and 1936. A. 1936 into 1937; there is a winter in '37, too.

Q. In 1938, did you spend that winter in Florida?

By the Court:

Q. That is '38 and '39. A. No, sir.

Q. In 1937 and 1938, where did you work? A. I worked in 1935 and 1936.

Q. What gambling house? A. One was in Miami Beach and the other was in Hollywood, Florida.

Albert Tannenbaum—For People—Cross

6881

Q. Which one in Miami Beach, and where was it located? A. In Deauville, North Miami Beach.

Q. Right on the ocean? A. Yes, sir.

Q. Did you know the crowd at Mannie's Coffee Shop on 33rd Street? A. Yes, sir.

Q. Did you hang out there too? A. No, sir.

Q. Did you know about a poker game there? A. Yes, sir.

Q. That was to hook people from the Rooney Plaza? A. I don't know; I was never in ther.

Q. Little Augie ran that, didn't he, Pisanof? A. Yes, sir.

6882

Q. He ran Jimmy Kelly's up here on Atlantic Avenue and Court? A. I don't know.

Q. Did you belong to the Rooney Plaza pool? A. Did I belong?

Q. Did you bathe there? A. No, sir.

By Mr. Barshay:

Q. Other than the 1938-1939 winter season, did you sojourn in Florida? A. No, sir.

Q. In 1939 and 1940 did you sojourn in Florida? A. I did.

6883

Q. You were not working then? A. I worked three days and then the place closed.

Q. Then did you remain there for the rest of the season? A. I did.

Q. That was in 1940? A. Yes, sir.

Q. Now, how many seasons did you work in Saratoga as a strong-arm man in a gambling house? A. One.

Q. What year was that? A. That was in the summer of 1937.

Q. Did you spend any summers up there? A. No, sir.

6784

Albert Tannenbaum—For People—Cross

Q. Other than working as a strong-arm man in a gambling house? A. No, sir.

Q. Now, in Sullivan County, where your father ran this country club, did you run slot machines? A. I did not.

Q. Were you partners with men who ran slot machines? A. No, sir.

Q. Wasn't that your racket? A. No, sir.

6785 Q. Didn't you, in association with others, force upon the hotel keepers in Sullivan County your slot machines? A. I never had slot machines.

Q. Did you have a partner up there? A. No, sir.

Q. Did you have a friend up there in that business? A. Yes, sir.

Q. Did he have his machines in your father's place? A. No, sir.

Mr. Turkus: I object—All right, it is answered.

6786

Q. Have you been working recently, Tannenbaum, before your arrest in legitimate employment? A. No, sir.

Q. Did you ever tell anyone you worked—Did you ever tell any Government agency that you worked? A. Yes, sir.

Q. That was a lie? A. Yes, sir.

Q. You obtained a Social Security card, didn't you? A. I did.

Q. Did it say that you were working at the Annette Shop, a hat shop at 596 Broadway? A. No, sir.

Q. What is the name you gave as the one company that employed you? A. Passaic, New Jersey.

Albert Tannenbaum—For People—Cross

6787

Q. What was the name of it? A. The D. R. Clothing Company.

Q. You did not work for them? A. No, sir.

Q. You secured a Social Security card that you did? A. Yes, sir.

Q. For how long did you carry that? A. Oh, for about a year.

Q. Did you register for the draft? A. Yes, sir.

Q. Where from? A. From Brooklyn.

Q. What date, do you know?

6788

Mr. Turkus: I object, it does not make any difference.

The Court: Objection overruled.

A. I don't know.

Q. Did you ever use an alias? A. No, sir—
An alias?

Q. Yes. Do you know what that means? A. Yes, sir, I did use an alias.

Q. You change your answer? A. I did use an alias.

6789

Q. What name did you use? A. Engel.

Q. Any other? A. Schafer.

Q. Any other? A. Snyder.

Q. Any other? A. No, that is about all.

Q. Did you live in the Borough of Brooklyn under aliases? A. Yes, sir.

Q. Under what name? A. Schafer.

Q. You were married then? A. Yes, sir.

Q. Living with your wife and child? A. Yes, sir.

Q. Do you know the date of your marriage?
A. No, sir, I do not.

6890

Albert Tannenbaum—For People—Cross

Q. Do you know when your baby was born?

A. Yes, sir.

Q. Did you live at the White Hotel? A. I did.

Q. How long did you know Rubin? A. Who?

Q. Rabin. A. Max Rubin?

Q. Yes. A. I met him about 1933 or 1934.

Q. You know his business? A. Yes, sir.

Q. Did you know he was a finger man? A. No, sir.

Q. Did you ever have any business with him?

6891

A. No, sir.

Q. Did you ever see him at his union? A. No, sir.

Q. Did you ever talk to him? A. Yes, sir.

Q. Now, this country club that your father ran, was this a Sullivan County bar and grill, bowling alley, and above it were some rooms?

A. He had a hotel.

Q. In 1925, was it the way I described it, or did he have a hotel in addition?

Mr. Turkus: I object to how it was in 1925.

6892

Q. In 1925, at that time was it a hotel or was it just a bar and grill, concession like bowling and pool, and some rooms above the bar and grill? A. I don't know what it was in 1925.

Q. You went to work there? A. In 1925?

Q. You said so. A. He bought the place about 15 years ago; it would not be 1925.

Q. Were you there in 1925? A. Rock Hill?

Q. I am now speaking after you left Rock Hill and went to Sullivan County, Loch Scheldrake.

Albert Tannenbaum—For People—Cross

6893

What year did he go there? A. About 15 years ago.

Q. I am approximately right, 1925 or 1926. Do you recall that? A. That would make it 1927.

Q. What? A. 1927.

Q. May I refresh your recollection? Did you say yesterday here that you met Charlie Gurrah Shapiro about 1925 or so? A. Yes, sir.

Mr. Turkus: That is not inconsistent, because he did not say he met him at Loch Sheldrake.

6894

Mr. Barshay: I did not say it was inconsistent. I simply asked him to refresh his recollection.

The Court: Objection overruled.

Q. It was then you met Gurrah? A. About 1925.

Q. Did you sell liquor up there in 1925? A. Where are you talking about, Rock Hill?

Q. I am talking about Loch Sheldrake. A. We did not have it then.

Q. When did you have it? A. About 15 years ago.

6895

Q. This is 1941. Now subtract 15 from 1941 in your own mind. What year was it? A. 1926.

Q. Did you sell liquor up there then? A. Loch Sheldrake? When we had Loch Sheldrake we did sell liquor.

Q. A speakeasy? A. No, sir, it was not a speakeasy.

Q. That was in violation of law? A. Yes, sir.

Q. You ran gambling there, too, didn't you? A. No, sir.

6796

Albert Tannenbaum—For People—Cross

Q. That was the attraction to your father's bar and grill, wasn't it, gambling and liquor?

A. I did not run it.

Q. Your father ran it, and you worked there?

A. He did not.

Q. Shapiro did not stop at your father's place in 1926, did he? A. Loch Sheldrake, no.

Q. All these men you mentioned did not stop at your father's place in 1926, did they? A. No, sir.

6797

Q. They stopped in surrounding hotels? A. That is right.

Q. And your father's place attracted them because he was running a speakeasy and gambling, didn't it? A. He was running it, but if you want me to tell you who ran the gambling place, I will tell you.

Mr. Barshay: I move to strike it out.
The Court: Motion granted.

6798

Q. Please answer the question, Mr. Tannenbaum. What did you do there during the summers, up until the time you met Buchalter? A. I worked up there during the summer.

Q. What did you do? A. All around the place, by the boats, the lake. Used to drive to the station.

Q. In a gambling house at night? A. I did not work in a gambling house; it had nothing to do with the gambling house.

Q. Did you work there at night—yes or no? A. I did not.

Q. Did you work in a speakeasy—yes or no? A. No, sir.

Q. Never? A. No, sir.

Q. What were you making a week up there before you met Buchalter? A. I was not getting paid by the week.

Q. So you had very little money? A. Well, if we had a good summer my father used to pay me.

Q. You, personally, had very little pocket money? A. That is right.

Q. You saw all these men who came there spending rather freely? A. Yes, sir.

Q. And the bug began to bite you, didn't it, isn't that so? A. The what?

6800

Mr. Turkus: Which bug, the Charley bug?

Mr. Barshay: No, the Charley bug did not bite him.

Mr. Turkus: We will tell you more about that afterwards.

Q. You saw these men who were coming there before you met Bachalter, you saw them spending lots of money? A. Buchalter came with them.

6801

Q. You said you met him in 1930—I am speaking about before you met him.

Mr. Turkus: I object. That is not the testimony. The testimony is—

Mr. Barshay: (Interrupting) I object to Mr. Turkus saying what the testimony is. I refer you to the record.

Mr. Turkus: At the proper time, maybe you will.

6802

Albert Tannenbaum—For People—Cross

Mr. Barshay: I will let the witness read the testimony.

Q. Did you say you met Buchalter in 1930 or 1931? A. I knew him in 1930 or 1931. I went to work for him in 1930 or 1931. I met him before.

Q. Do you remember this question yesterday:

"Q. When was that you first met Lepke? A. About 1930 or 1929."

6803

Did you say that yesterday? A. I went to work for him in 1930 or 1931, but I met him before.

Mr. Barshay: I move to strike out the answer as not responsive.

The Court: Let it stand.

Mr. Barshay: Exception.

Q. The next question, right after the one I just read to you:

6804

"Q. Are you referring to the time when you first met him at the Loch Sheldrake Country Club? A. Yes, sir."

Did you make that answer to the question as I read it to you? A. What is that?

Q. I will read them together so as to get your mind clear:

"Q. When was that you first met Lepke? A. About 1930 or 1929.

"Q. Are you referring to the time when you first met him at the Loch Sheldrake Country Club? A. Yes, sir."

Did you make those answers to the questions as I read them? A. Yes.

Albert Tannenbaum—For People—Cross

6805

Q. Now, all these times until 1930 your father was asking Shapiro to put you to work? A. He was not.

Q. Shapiro forced you to work for him? A. He did not.

Q. You went there to work voluntarily? A. Where?

Q. For Shapiro? A. Greeny put me to work.

Q. Greeny? A. Yes, sir.

Q. You went to work for him eventually? A. He asked me if I wanted to go to work.

6806

Q. And you said, "Yes"? A. Yes, sir.

Q. In other words, no one put a gun to your back and made you go to work? A. No, sir.

Q. The pay was good? A. \$35. a week.

Q. You enjoyed it?

Mr. Turkus: I object to the form of the question.

The Court: Objection sustained.

Q. Was it to your liking?

Mr. Turkus: I object. Everybody likes their pay.

6807

The Court: It is immaterial. Objection sustained.

Mr. Barshay: Exception.

Q. So you continued in this employ until you were getting \$150. a week? A. \$125.

Q. Now, in 1935, toward the end, and of the year 1936, you said you saw the defendant Buchalter? A. Yes, sir.

Mr. Turkus: There is not a scintilla

6808

Albert Tannenbaum—For People—Cross

of evidence in the record by this witness that any such statement was made which you just said.

Mr. Barshay: I object to counsel interrupting.

The Court: Yes.

Q. How often did you see him in 1936? A. Whenever I went up to the office.

6809

Q. How often, once, twice, ten times? A. You mean during the year 1936?

Q. Yes. A. I saw him about four or five times a week.

Q. Well, did you see him after September 11, 1936, four or five times a week? A. After September 11th?

Q. Yes. A. No, sir.

Q. How many times a week did you see him after that? A. I used to start going to the office less.

Q. You started going to the office less and less? A. Yes, sir.

6810

Q. What month in 1936 did you start to do that? A. Toward the end of 1936.

Q. Was it because he told you that the police were following him? A. He did not tell me but I knew it.

Q. You knew that yourself? A. Yes, sir.

Q. You knew before September, 1936, that the defendant Buchalter was being followed by police? A. Yes, sir.

Q. You knew it in the latter part of 1935, didn't you? A. I don't know about the latter part of 1935.

Q. Did you know it in the early part of 1936? A. I knew he was being followed.

Albert Tannenbaum—For People—Cross

6811

Q. Did you know until when he was being followed by the police? A. Until he went away.

Q. Do you know when he went away? A. About August of 1937.

Q. Is your memory clear on that? A. To the best of my knowledge.

Q. When did you see him last before he went away? A. Oh, I don't know, maybe a few weeks before he went away.

Q. So that, can you say with reasonable certainty, you saw him in August of 1937?

6812

Mr. Turkus: I object to that as already answered.

The Court: Objection overruled.

Q. (The Court) Was it in August? A. I don't know.

Q. Was it in July? A. It might have been in July.

Q. Give me your best recollection. A. I could not tell you that. A few weeks before he went away.

Q. Can you give me your best recollection now when, to your knowledge, Buchalter went away? A. About August of 1937.

6813

Q. Your best recollection is that about two weeks before he went away in August of 1937, as you say, you saw Buchalter?

Mr. Turkus: Objected to as repetitious of what he said.

The Court: Sustained.

Mr. Barshay: Exception.

Q. When before the time you just spoke of,

6814

Albert Tannenbaum—For People—Cross

two weeks before he went away, did you see Buchalter? A. What?

Q. When before the last time you saw him—next to the last time you saw him—

Mr. Turkus: I object to that as confusing.

The Court: Objection overruled.

Q. Do you know? A. No.

6815

Q. (The Court) Do you remember? A. No, sir.

Q. Did you see Buchalter in February or March of 1936? A. February or March?

Q. Yes. A. I don't know.

Q. What is your best recollection? A. I don't know.

Q. Did you see him in October, or November, or December of 1936? A. I used to see him right along.

Q. If you saw him right along, you are not sure that you saw him in September, 1936? A. I know it was 1936, I was in Florida for a while.

6816

Q. You were in Florida in October of 1936? A. October?

Q. Yes. A. No, sir.

Q. Did you see Buchalter then? A. I might have.

Q. I want to know your best recollection. A. I could not answer that. That is five years ago.

Q. You did not keep a diary? A. No, sir.

Q. You did not keep notes of what people say to you? A. No, sir.

Q. And you do not keep notes of where you see people? A. No, sir.

Albert Tannenbaum—For People—Cross

6817

Q. You did not keep notes of what hours of the day you saw people? A. No, sir.

Q. You never made a memorandum who was present when you saw people? A. No, sir.

Q. Did you see him in November of 1936? A. I don't know.

Q. Did you see him in the early part of December, 1936? A. I don't know.

Q. Do you know whether you saw him before he went away in 1937? A. No, sir.

Q. Was it at number 200 Fifth Avenue? A. I do not remember.

6818

Q. Was it at any one of the other offices which you say you saw him at? A. I don't think so.

Q. Can you tell me, to the best of your recollection, when you saw him before he went away, two weeks before he went away? A. Toward the end we got strict orders to stay away, just before he went away; and he used to make different appointments, in different places, sometimes in the subway, sometimes in the street.

Q. Give me your best recollection when before he went away, where you saw him. A. I don't remember that.

6819

Q. Or who was present? A. I don't remember that.

Q. When, for the first time, did you learn that Buchalter was under surveillance? A. I could not give you the date of that.

Q. Give me the approximate year. A. About 1936.

Q. Can you give me the approximate month? A. I could not give you that.

Q. Did you see Buchalter in 1935? A. Yes, sir.

6820

Albert Tannenbaum—For People—Cross

Q. Did you see him in September of 1935? A. September of 1935?

Q. Yes. A. Yes, sir.

Q. You are positive of that? A. I think so.

Q. Can you tell me what part of September, 1935? A. No, sir, I could not give you the exact date.

Q. Can you tell me where you saw him in September, 1935? A. It might have been in the office.

6821

Q. Which one? A. I do not remember which one; I could not tell you the exact place.

Q. Did you see him in August of 1935? A. I might have.

Q. Give me your best recollection. A. I don't know; I could not tell you exactly.

Q. You cannot remember? A. No, sir.

Q. Did you know he was in Europe in 1935? A. I knew he was in Europe.

Q. Do you know what month he was in Europe, was it in August or September? A. I don't know; I don't remember the month.

6822

Q. When he came back from Europe in 1935, did you learn that Thomas E. Dewey was appointed Special Assistant District Attorney? A. Yes, sir.

Q. Was it well known? A. Yes, sir.

Q. Tannenbaum, were you told immediately after he came back from Europe, meaning the defendant Buchalter, in 1935, to keep away from him because Dewey's representatives or members of the Police Department attached to Dewey's office were following him day and night? A. Yes, we were told but we used to sneak over.

Q. Did you know that detectives were in front of his home? A. No.

Albert Tannenbaum—For People—Cross

6823

Q. Did you know they were in front of his place of business? A. As far as I was told, they were.

Q. What? A. As far as I was told, they were.

Mr. Turkus: I think the hearsay will have to be stricken out. It may give a confused picture of what kind of surveillance this was.

Mr. Barshay: I object to counsel—

The Court: It has a relation nevertheless to this witness' comings and goings in relation to Buchalter.

6824

Mr. Turkus: He has not been asked about that.

The Court: I figure that is the purpose of it. Overruled.

Q. The defendant Buchalter told you that? A. I don't remember if it was Buchalter.

Q. You knew, it, did you not? A. Yes, sir.

Q. And you acted accordingly? A. Well, we could always sneak away from the police.

Q. The police were not good, were they? A. Not that I know of.

6825

Q. What? A. As far as I know, we used to sneak up.

Q. What? A. We used to sneak up.

Q. Did you know that police were immediately outside of the Raleigh Clothes at 200 Fifth Avenue, in the very hallway— A. I never saw them.

Q. From time to time? A. I never saw them.

Q. Did you know some of the detectives assigned then to watch Mr. Buchalter? A. No, sir.

Q. Did you know any of them? A. No, sir.

Q. Until what time—until what year, rather,

6826

Albert Tannenbaum—For People—Cross

did you continue to see Buchalter four or five times a week? A. About 1936 or so, some time in 1936.

Q. Can you tell me what month? A. No, I could not.

Q. What? A. No, sir.

Q. Can you tell me any other date that you met Rubin? A. No.

Q. What? A. I could not tell you the exact date.

6827

Q. Nohow?

Mr. Turkus: I object to that "nohow". That is confusing.

Q. You cannot tell me nohow? A. What do you mean, when I met Rubin?

Q. Yes, what date you met Rubin other than the time you mentioned? A. No, I could not mention it.

Q. Do you know the size of this office, the Raleigh Clothes? A. The size?

6828

Q. Yes. A. I could not tell you the exact size.

Q. Do you know the floor? A. Yes, sir.

Q. How many floors did they occupy there? A. How many floors?

Q. Yes. I don't mean in space. I withdraw it. I will put it this way:

Q. Did they occupy at one time a floor other than the one you described? A. Which building are you talking about?

Q. 200 Fifth Avenue. A. They occupied any other in that building?

Q. Yes. A. No, sir, not that I know of.

Q. Didn't you know they were on the seventh

floor? A. They were on the tenth floor that I know.

Q. And then on the tenth? A. They were on the tenth.

Q. Were you ever on the seventh? A. I don't think so.

Q. Do you know when they moved out? A. Out of 200?

Q. Yes. A. No.

Q. Cannot tell us at all? A. No.

Q. Do you know when the last time was you were at the Raleigh? A. The last time? It was some time in '36.

Q. Do you know the day? A. No.

Q. Do you know the construction of that office? A. Yes, sir.

Q. As you walk in, there is one outer office? A. Yes, sir.

Q. Is it divided inside with a wooden partition, right? A. Yes, sir.

Q. And two small rooms? A. Yes, sir.

Q. About eight by ten feet? A. I don't know the measurements.

Q. Can you indicate here, from the beginning of the jury rail, just exactly how the inside office, how large rather the inside office was? A. I could not tell you the exact size.

Q. Was it a small office? A. It was a medium office.

Q. How many windows in the office? A. I don't remember how many windows.

Q. Do you know how many people worked there? A. I know about how many people.

Q. How many? A. Bookkeeper, about three salesmen—he had about three salesmen up there.

6832

Albert Tannenbaum—For People—Cross

Q. Do you know their names? A. I forgot their names.

Q. Do you know how many girls were employed there? A. I think there was two girls there, one or two girls.

Q. Did you know their names? A. One was Charlie Gurrah's niece.

Q. You knew her? A. Yes, sir.

Q. The other one? A. The other one I don't know.

6833

Q. Do you know anyone else who was working there? A. In that particular office?

Q. Yes. A. The same people that worked over in 22nd Street and Fifth Avenue went over there.

Q. That was an office of a Baltimore concern, wasn't it? A. Raleigh Manufacturing Company.

Q. Their main factory was in Baltimore? A. Yes, sir.

Q. This was a buying office, was it not, a selling office? A. Selling office.

Q. And people used to come there to sell cloth, is that correct? A. Yes.

6834

Q. And it was a very active office? A. Sometimes it was active.

Q. The outer office was always active, wasn't it? A. Well, no, not always.

Q. Well, there were girls there? A. There was a girl worked there.

Q. Typewriters, telephone? A. Yes.

Q. Filing system? A. Yes.

Q. Cabinets? A. Yes, sir.

Q. Samples? A. I don't know if the samples were outside.

Q. Samples of cloth, not the finished product but samples of cloth? A. They had cloth samples there, yes.

Q. Was the defendant Buchalter's name on the door? A. I don't think so.

Q. What? A. I don't think so.

Q. Was it on the inner door? A. I don't think so.

Q. Can you pick out any one in this courtroom who worked there? Do you think you can?

The Court: It is a pretty big courtroom, Mr. Barshay.

Mr. Barshay: That is all right. That is the only way.

6836

The Court: Do you want him to step down and walk around? I doubt if he can do it up here. I have been trying to pick out some relative of mine, without success.

Mr. Barshay: I won't bother the Court with having him walk down, although that is the proper way.

The Court: It will be done, if you wish.

Q. You walked into this Raleigh, you say, on September 11, 1936?

6837

Mr. Turkus: Objected to. There was no testimony by this witness as to the date.

The Court: I think that is right, Mr. Barshay.

Q. All right, I will ask you what day did you go there? A. I don't remember the date.

Q. What day of the week was it? A. It was on a Friday.

Q. Had your father's place been opened in

6538

Albert Tannenbaum—For People—Cross

Loch Sheldrake at that time? A. It was right after Labor Day.

Q. Yes. Didn't your father keep open for the Jewish holidays? A. I don't remember.

Q. Do you know when the Jewish holidays followed Labor Day then? A. No, sir.

Q. I am speaking of the Jewish holidays, that is Rosh Hashana and Yom Kippur. A. Yes, I know.

6839

Q. Wasn't it the custom to keep open in Sullivan County until the end of the Jewish holidays? A. Some places did and some places didn't.

Q. What was the custom with respect to your father? A. Sometimes he kept open.

Q. What did he do that year? A. I don't remember what he did.

Q. You have no recollection? A. No.

Q. Have you a recollection of being at the Laurel Club that week-end, the Labor Day week-end? A. The Laurel Club?

6840

Q. The Laurel Country Club. A. I don't remember.

Q. You don't remember that? A. No.

Q. Have you a recollection of being at the Park Hotel? A. Park Hotel?

Q. Yes. A. Where is the Park Hotel?

Q. Is there a Park Hotel in Sullivan County, to your knowledge? A. I don't know.

Q. The Palace Hotel? A. I don't know.

Q. You don't remember those? Do you recall now whether or not your father kept his place open during the Jewish holidays of September, 1936? A. I don't remember.

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6841

Q. Do you recall staying there any portion of those holidays? A. I don't remember.

Q. Do you recall what date you left Sullivan County? A. No, sir.

Q. Do you recall what date you arrived in New York? A. No, sir.

The Court: Were not those holidays in October?

Mr. Barshay: Not that year, your Honor. I can say with reasonable certainty they were September 17th. They began September 17th. That is the best I can get. They don't always run in October; mostly in September.

6842

Q. You have no recollection of your doings? A. Of what?

Q. I said, you have no recollection of your doings?

Mr. Turkus: I object to that.

Mr. Barshay: Let me finish. I will make it more specific.

6843

Q. You have no recollection with respect to your doings before September 11, 1936? A. Before September 11th?

Q. Yes, when you came from Sullivan County, when you arrived. A. I came in to New York.

Q. You don't know the date, do you? A. No, the exact date I don't know.

Q. Did you go back to Sullivan County in September of 1936? A. After I came back?

Q. Yes. A. No, sir.

Q. Did you go back to help your father close

6844

Albert Tannenbaum—For People—Cross

his place? A. I did not work for my father any more.

Q. I did not say you did. Did you go back to help him close his place? A. No, sir.

Q. Did you go back to gather up the slot machines in 1936 for that year?

Mr. Turkus: Object to it.

6845

A. I did not have any slot machines to gather up.

Q. You did not see them? A. I saw them. I had no part of them.

Q. Were they in your father's place then? A. Yes, sir.

Q. Do you know who put them there? A. Yes, sir.

Q. Your friend, wasn't it? A. No, sir.

Q. Was it the same man on whose farm a body of one of the men you mentioned was buried?

6846

Mr. Turkus: Let us have identities mentioned for the record. I object to the question.

Q. Do you know the man I mean? Do you know the body I mean? A. Yes.

Q. What was the name? A. Chink Sherman.

Q. That is the same man who put the slot machines in your father's place? A. Chink Sherman?

Q. No, the man who owned the ground. A. No, he did not have any slot machines in my father's place.

Q. Was it another man? A. Yes, sir.

Q. Can you give us his name? A. I can give you his first name.

Q. What was his first name? A. Morris.

Q. You don't know his second name at all?

A. No.

Q. Do you know what time you came up to this office at the Raleigh to see Buchalter? A. When are you talking about?

Q. What? A. When are you talking about?

Q. The time you are talking about.

Mr. Turkus: I object to this colloquy between the witness and the lawyer. That is prone to start some discussion—

Mr. Barshay: Please, Mr. Turkus, there is no colloquy. I put a question to the man.

Mr. Turkus: He asked you a question and you answered him one back, and that will start an argument. I object to that type of examination.

The Court: Better reframe it.

Q. I am talking about the Friday. Now you understand? A. Yes, sir.

Q. But you don't know the date? You don't know the date or the month? A. The date?

Q. Yes. A. No, sir.

Q. So we speak of it as Friday? A. Yes, sir.

Q. But it is clear what day we are speaking of? A. Yes, sir.

Q. Do you know what time you came in? A. Sometime in the afternoon.

Q. Do you know the time? A. No.

Q. Can you give me the approximate time?

A. No, sir. All I can say was the afternoon.

6850

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Q. The afternoon is quite big, isn't it? A. Yes.

Mr. Turkus: I object.

Q. You tell me your best recollection of the hour.

Mr. Turkus: I object to it. He stated that he could not.

6851

The Court: Are you in a position to make any estimate as to the hour that is fairly accurate?

The Witness: No, I could not give an accurate hour.

Q. I will try to probe your recollection. Was it three o'clock? A. I would not say for sure.

Q. Four o'clock? A. It was sometime in the afternoon.

Q. I am trying for a purpose to find out if you can fix your recollection. A. I would not say for sure.

6852

Q. You had a very vivid recollection as to the conversation, didn't you? A. Yes.

Q. But you have no recollection as to the hour you came? A. The exact hour I don't know.

Q. I don't want the exact hour. A. It was sometime in the afternoon.

Q. Was it five o'clock?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

Q. You have not any idea whatever? A. No.

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6853

Q. Do you know what time you left? A. No, I could not give you the time.

Q. Do you know how long you stayed there? A. About a half hour or so.

Q. Do you know who was in the office when you first came? A. In which office? There were three rooms to that office.

Q. I am speaking of the main office, when you entered the door, and in the outer room. A. The outer room?

Q. Yes. A. The girl was there.

6854

Q. Which one? A. I don't know which one.

Q. You don't recall that? A. No.

Q. Anybody else there? A. I don't remember if there was anybody else there.

Q. Speak up, please. A. I say I don't remember if there was anybody else there.

Q. Did you know Frank Cohen there? A. Who?

Q. Frank Cohen. A. I don't recall the name.

Q. Do you know who was in charge of that office? A. Yes, sir.

Q. Do you know his name? A. Yes, sir.

6855

Q. What is his name? A. Carl Shapiro.

Q. Carl Shapiro was in charge of the factory and traveled from the factory to the office. You knew that? A. As far as I knew, he was in charge of Raleigh Manufacturing Company.

Q. Was Carl Shapiro there that day? A. I don't recall.

Q. You knew him well? A. Yes, sir.

Q. You don't recall seeing him, do you? A. I don't remember. Sometimes if I went up there he was there; sometimes he was not there.

Q. How many people who worked there did you see that day when you entered? A. They

6856

Albert Tannenbaum—For People—Cross

might have been in different rooms. I don't know how many were there. I saw the girl outside. I remember her.

Q. Only one? A. Yes, I think there was one girl.

Q. That is all? A. I would not say for sure how many was there.

Q. Did you speak to her? A. Just, "Hello."

Q. Was it Naomi Shapiro? A. That's her name. Naomi Shapiro worked there.

6857

Q. Did you speak to her that day? A. I don't remember if I spoke; probably said hello and kept walking.

Q. Do you remember her definitely being there that day? A. I can't say definitely.

Q. Do you remember the other girl being there that day? A. No.

Q. Was this after the lunch hour that you came up? A. I think it was, yes.

Q. How many people would you say you saw in the outer room as you entered? A. I would not say for sure.

6858

Q. About how many? A. I don't know. I would not answer.

Q. Would you say one? A. One I know I seen.

Q. Would you say two?

Mr. Turkus: I object to it. He has indicated—

Mr. Barshay: I object to counsel making a speech so that the witness can gain some suggestion, even though it may not be intended for that purpose.

The Court: Overruled.

Mr. Turkus: I have heard these charges before.

Mr. Barshay: I am not making any charges.

Mr. Turkus: They are underhand attacks to bait the prosecutor.

Mr. Barshay: You are an expert at that.

Mr. Turkus: You are an expert at that, and your coterie of counsel with you.

The Court: Lots of compliments.

6860

Mr. Barshay: All right, let us skip it.

Mr. Rosenthal: I thought we started out without casting slurs on one another. "Coterie," I assume, means everybody.

Mr. Cuff: He did not leave me out either.

The Court: You are smiling, and Mr. Barshay is smiling, so I guess everything is all right.

Mr. Rosenthal: I will forgive him.

Mr. Turkus: There are so many of you, I got confused. I should not have said "coterie."

6861

Q. Tannenbaum, can you tell me in your best recollection how many people you saw in the outer room? A. No, I couldn't.

Q. Was it more than one? A. Possibly.

Q. Was it more than two? A. I could not say for sure.

Q. Did you see different people in that room?

A. What do you mean by different people?

Q. I am using your expression at page 2098: "When you went up to that office to make your

6862

Albert Tannenbaum—For People—Cross

report, as you stated to the jury, whom did you see in the office? A. I saw different people that worked there. Then I walked into one of the rooms and I saw Lepke."

Don't shake your head, please. A. Yes, sir.

Q. Which different people did you see there?

A. People that work there. I don't know their names. I don't remember their names.

Q. How many? A. I don't know. I would not say the exact amount.

6863

Q. Can you give me your best definition of what you mean by "different people," in numbers?

Mr. Turkus: I object to it. The testimony has been elicited clearly as to what his recollection is.

The Court: Obviously there was nothing to attract his attention to that unless he went up in connection with people who worked there. Did that register?

The Witness: No, sir.

6864

The Court: Let it go at that.

Q. Were there people there other than those who worked there?

Mr. Turkus: I object to it.

A. I don't remember.

Q. You do not remember, do you? A. No.

Q. Now, the partitions are made of wood. Is that so? A. I imagine so.

Q. Oak wood? A. I don't know what kind of wood.

Albert Tannenbaum—For People—Cross

6865

Q. Do you know the color of wood? A. I don't know.

Q. And did the partitions made of wood run to the ceiling?

Mr. Turkus: I object to it. The witness said he imagined they were made of wood. That does not make them made of wood.

The Court: Don't imagine anything.

Mr. Turkus: I object to the question.

The Court: Just state, Mr. Witness, what you know. 6866

Mr. Turkus: I object to the question.

The Court: He can say whether he noticed if the partitions ran to the ceiling.

The Witness: I don't know.

Q. Whatever they were made of, Tannenbaum, did they run to the ceiling? A. I don't know. I don't remember that. Never noticed.

Q. Were the partition part up against the wall made of some substance which was solid and the other part up to the ceiling a substance which was glass? A. I don't know. 6867

Q. You do not recall that? A. I never noticed it.

Q. Were the transoms open so that the outer room could get air from the inner room if the windows were open? A. I don't know.

Q. You do not recall that at all? Were you told there was a dictaphone in that room? A. No, sir.

Q. When you went into the outer office, did you announce yourself? A. No, sir.

Q. Did you hear a lot of noise? A. No. No.

6868

Albert Tannenbaum—For People—Cross

Q. Did you hear any voices within the room?

A. I heard voices.

Q. Could you hear it from where you were in the outer room? A. Could I what? Could I hear it from the outer room?

Q. When you were in the outer office, could you hear the voices in the inner room? A. I could hear voices, yes.

Q. Loud enough— A. You could not make it out though, could not understand it.

6869

Q. Well, as you got into the outer office of this Raleigh, from the noises that you heard did you come to the conclusion that they were speaking louder than in the ordinary tone? A. No.

Q. What? A. No.

Q. Did the voices seem excited inside? A. I could not make it out through the wall.

Q. Not in the hall? A. I said through the wall.

Q. Did they sound loud and angry?

6870

Mr. Turkus: Objected to as already answered.

The Court: Just yes or no. Could you tell?

The Witness: What is that?

The Court: Did they sound loud and angry?

The Witness: No, I could not tell.

Q. And so you opened the door of Buchalter's office, did you? A. Yes, sir.

Q. Just when Rubin was there? A. Yes, sir.

Q. Can you tell me of any other time when that same occurrence took place, that you opened

Albert Tannenbaum—For People—Cross

6871

the door and you saw Rubin and Buchalter speaking? A. I used to see them together a lot.

Q. Give me one time. A. I could not give you the exact time. I saw them together a lot of times.

Q. In that office? A. In that office, Fifth Avenue.

Q. Give me now the exact time or near the exact time as you can when you saw that situation? A. I could not tell you the exact time.

Q. Nobody asked you to stay out of that office, that private office, where Rubin and Buchalter were speaking? A. No, sir.

6872

Q. Just walked right in and sat down? A. That is right.

Q. At that time the conversation was loud and angry, wasn't it? A. When I walked in, yes.

Q. And it continued loud and angry for how long? A. A few minutes.

Q. Were the voices raised when you walked in? A. Louis was angry.

Q. Were the voices raised, that of Louis or Rubin?

6873

Mr. Turkus: Object as already answered. He said Louis was angry.

The Court: Let it stand. Sustained.

Mr. Barshay: Exception.

Q. When you walked in was Buchalter's voice louder than what you heard on the outside? A. Yes, sir.

Q. Much louder? A. A little louder.

Q. Shouting? A. Not shouting.

Q. Very angry? A. He was angry.

6874

Albert Tannenbaum—For People—Cross

Q. He did not subside when you walked in?

A. No, sir.

Q. No request to come out into the hallway?

A. What?

Q. There was no request by Buchalter to come out into the hallway? A. Request of me?

Q. Of you or of Rubin? A. Not that I know.

Q. Were the voices at the time when you got into the room loud enough to be heard on the outside?

6875

Mr. Turkus: I object to that. That is something he could not tell. Mr. Barshay has him in the room now with these two individuals, Lepke and Rubin, where there is a conversation and asks him were the voices there loud, loud enough for people on the outside to hear. That is an impossibility.

The Court: That calls for expert testimony but he can state whether they were loud or whether they were quiet.

6876

Q. What were they?

The Court: Were they loud?

Mr. Turkus: I object to the word "they" because the testimony is that only one voice was raised.

Mr. Barshay: All right, Buchalter's.

The Court: Was Buchalter's voice loud?

The Witness: It was not too loud.

Q. It was not too loud? A. No.

Q. He was not trying to modulate his tone so that he could not be heard on the outside?

Mr. Turkus: Objected to. He cannot tell what Lepke was trying to do.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Normally Buchalter talks in a quiet tone, does he not? A. Yes, sir.

Q. Isn't that his normal speech? A. Yes, sir.

Q. About as quiet as you were talking on the stand until the Judge asked you to raise your voice? A. Yes, sir.

Q. But this time he was shouting?

Mr. Turkus: Objected to. That is not the testimony.

The Court: I don't think he said. Did he say shouting?

Mr. Turkus: He did not.

Mr. Barshay: Judge, I must not have him repeat what he said in his testimony. That is the very purpose of cross-examination, to see what his recollection is now.

The Court: Counselor, the reason I asked you is because you say "this time he was shouting." You did not say it with an upward inflection but you said it as a statement, with a downward inflection.

Mr. Barshay: I am questioning him, Judge. I have not even turned to the page so I do not know.

The Court: You can ask him if he was shouting.

(Pending question read.)

6880

Albert Tannenbaum—For People—Cross

A. He was not shouting. He was talking louder than he usually does.

The Court: Does he usually talk in undertones?

The Witness: Not undertones—soft.

The Court: Quiet spoken?

The Witness: Yes.

Q. Was he yelling?

6881

Mr. Turkus: I object to it.

The Court: He said he was not shouting. Now the question is, was he yelling?

Mr. Turkus: That is a play on words.

Mr. Barshay: Just a second, please. I must have Mr. Turkus not interfere. I do not want to make any accusations but this is a smart witness.

Mr. Turkus: Every witness in this case is sure to be smart. If they were so smart, they would not have been here, you bet your life.

6882

Mr. Barshay: I won't answer that now. I will later.

The Court: Objection is overruled. Was he yelling?

The Witness: He was talking louder than he usually does.

Q. Was he yelling? Yes or no.

Mr. Turkus: I object to it. That is already answered.

The Court: Overruled. Just yes or no, was he yelling?

Albert Tannenbaum—For People—Cross

6883

The Witness: He was talking louder than he usually does.

Q. Can we get an answer to that, Tannenbaum, yes or no? A. I would not call it yelling.

Q. You would not call it yelling? A. No.

Q. That is the truth? A. What?

Mr. Barskay: I withdraw the question.

At page 2099:

Q. "Q. Now, when Lepke's face was flushed, what did you hear him say to Rubin, in substance, the best you can recall? A. He was yelling at Max and he was saying"—do you remember—

6884

Mr. Turkus: Finish the answer.

Mr. Barskay: Wait a minute, please.

Mr. Turkus: Finish the answer.

Mr. Barskay: Judge, can I go one step at a time?

Mr. Turkus: No, you cannot read a question and a partial answer. That is not permitted.

6885

The Court: Overruled. Did you use the word "yelling" there? Yesterday did you use the word "yelling"?

The Witness: I don't remember.

Q. You do not remember whether you used the word "yelling" yesterday? Is that your answer? Is that your answer? A. I might have used "yelling".

Q. As a matter of fact wasn't he yelling so

6886

Albert Tannenbaum—For People—Cross

loudly that Max tried to quiet him? A. For Louis it was yelling.

Q. In all that conversation about Rosen, calling Rosen an s.o.b., all that—remember? A. Yes.

Q. And “that is the last time and he won’t go down to Dewey”? Remember that conversation? A. Yes.

6887

Q. That is the conversation you described in your direct testimony as yelling; isn’t that so? A. Yes, sir.

Q. Did not ask you to get out of the room? A. No, sir.

Q. Wanted you to hear it?

Mr. Turkus: I object to it. He cannot tell what Lepke wanted him to hear.

The Court: Sustained.

Mr. Barshay: Exception.

Q. He did not ask you to get out of the room? A. No, sir.

6888

Q. He did not ask Rubin to go in the public hallway, in the main hallway, of the building? A. No, sir.

Q. He did not open the door, Buchalter did not, to see if anyone came into the outer office? Did he? A. No.

Q. What? A. Not that I remember.

Q. He did not open the door to see who was in the outer room at that conversation? A. Not that I know.

Q. You did not see him do it? A. No.

Q. Do you recall exactly what was said? A. I don’t recall the exact words.

Q. You are sure you heard him say—you are snre you heard Buchalter say to Rubin, "Go ahead if you want to see him go ahead but make sure to come back and let me know what happened"? A. Yes, sure.

Q. That remained in your mind from 1936, on that Friday, until you testified yesterday? A. Well, I don't know if that is the exact words but I heard him say that.

Q. Did you give us what Buchalter said yesterday or did you give us your idea of what he said? A. What he said.

6890

Q. I am asking you now, did he use the words to Rubin, in the presence and hearing of Rubin— A. Yes.

Q. In this conversation that was yelling: "Go ahead if you want to see him, go ahead, but make sure to come back and let me know what happened?" A. That is right.

Q. That was Buchalter's exact words? A. Yes, sir.

Q. Said in the presence of Rubin, said in the hearing of Rubin? A. Yes, sir.

6891

Q. You made no note of that? A. Note?

Q. Yes. A. No.

Q. When you went out of the room how many people were in the outer room? A. I don't know.

Q. Don't remember that? A. No.

Q. Anybody speak to you? A. No, sir.

Q. Where did you go after that? A. Went around. I went out, probably went uptown.

Q. What? A. Probably went uptown.

Q. You don't remember? A. No.

6892

Albert Tannenbaum—For People—Cross

Q. You don't remember where you went that night? A. No.

Q. You don't remember where you went the next day? A. Where I went?

Q. Yes. A. No.

Q. You don't? No recollection whatever? A. No.

Q. What? A. No, sir.

Q. That was a Saturday? A. Yes.

6893

Q. Do you know where you were Sunday? A. No.

Q. Do you know whom you saw Saturday? A. No.

Q. Have no recollection whatever? A. No, sir.

Q. Did you see Shapiro Saturday? A. Might have.

Q. Have you a recollection? A. No.

Q. Did you see any Shapiro Saturday? A. I don't remember.

Q. You don't remember that? Did you have a hotel or did your family have a hotel in Long Beach then? A. My family have a hotel?

6894

Q. Yes. A. No.

Q. Were you at Long Beach that week-end? A. No, sir.

Q. You are positive? A. Yes.

Q. Did you register at the Nassau Hotel that Saturday, in Long Beach? A. Never lived in the Nassau Hotel.

Q. What? A. Never lived in the Nassau Hotel.

Q. I did not ask you that. Did you register at the Nassau Hotel? A. No, sir.

Q. Did you ever register at the Nassau Hotel? A. No, sir.

Q. You were not there? A. No, sir.

Albert Tannenbaum—For People—Cross

6895

Q. At any time in your life? A. No, sir.

Q. In Long Beach? A. No, sir—I was in Long Beach but not at the Nassau.

Q. Which hotel? A. Never lived in Long Beach.

Q. I did not say lived. Did you register for the night? A. No.

Q. At no hotel in Long Beach? A. No, sir.

Q. Were you ever in a hotel at Long Beach? A. No, sir.

Q. In that conversation with Buchalter you heard the name Rosen, did you not? A. Yes, sir.

6896

Q. You knew Rubin at that time was a representative of a union? A. Yes, sir.

Q. You knew it was the Truckmen's Union? A. Yes, sir.

Q. Did you hear in that conversation that Rosen was a truckman? A. No, sir.

Q. Was that the first time you heard the name Rosen? A. Yes, sir.

Q. Did you at that time know that Rubin was also interested in the flour trucking business in some fashion or other? A. Yes, sir.

6897

Q. You knew he was part and parcel of a scheme to extort money from flour merchants?

Mr. Turkus: I object to that.

The Court: Sustained.

Mr. Barshay: Exception.

The Court: It calls for a conclusion.

Mr. Turkus: That does not go to his credibility.

The Court: Also hearsay. It is not evidence.

6898

Albert Tannenbaum—For People—Cross

Q. Did Rubin ever tell you that?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception, your Honor.

The Court: It is collateral impeachment, does not come under the rule.

Mr. Barshay: I am laying my foundation for something else, not to impeach him.

6899

The Court: What is the purpose?

Mr. Barshay: Well, if I say the purpose openly, Judge, I am afraid the witness will get my idea.

The Court: Not to impeach him?

Mr. Barshay: No, not to impeach him.

The Court: You cannot impeach Rubin that way.

Mr. Barshay: No, I am not asking to impeach Rubin. It is on the question of flight.

The Court: Of Rubin's flight?

6900

Mr. Barshay: Yes.

The Court: You mean to challenge Rubin's testimony that he did?

Mr. Barshay: Not to challenge it, but to show whom he was fleeing from.

The Court: That would have to be by way of collateral impeachment or specific impeachment.

Mr. Barshay: Just laying my foundation.

The Court: Pardon me just a minute.

Mr. Barshay: I beg your pardon?

The Court: I am thinking. No, I do not

see where the rules of evidence as to either collateral or specific impeachment of Rubin on that point apply. Rubin has denied having fled for any other reason than the Rosen murder, hasn't he?

Mr. Barshay: I beg your Honor's pardon. To the contrary.

The Court: I am asking you.

Mr. Barshay: My idea is that Rubin has admitted flight from Dewey but he also adds flight from the Rosen case.

6902

The Court: You mean flight for general reasons, to keep away from Dewey?

Mr. Barshay: That is right. My purpose, your Honor, was to show that there was no flight on Rubin's part from the Rosen case, but a definite purpose to flee from the Dewey investigation. I hope to prove that.

The Court: Yes, but the objection is sustained because you are not under the rule.

Mr. Barshay: Exception.

6903

Q. Did Rubin ever tell you that Dewey was looking for him? A. No, sir.

The Court: That what?

Mr. Barshay: That Dewey was looking for him.

Mr. Turkus: He has answered "No."

Q. When did you learn of the Rosen murder?

A. I think it was Sunday night.

Q. You read about it in the newspapers? A. Yes, sir.

6904

Albert Tannenbaum—For People—Cross

Q. You read, I may say, tomorrow's edition today; is that so? A. That is right.

Q. What papers did you read? A. News, the Mirror.

Q. Any others? A. No.

Q. The next morning did you read the other papers? A. Yes, sir.

Q. Still about the Rosen murder? A. Yes, sir.

Q. Frankly, it made the headlines then, didn't it? A. I think so.

6905

Q. You read it quite in detail? A. Yes, sir.

Q. Because when you read the name of the victim, it recollected to your mind exactly what happened? A. Yes, sir.

Q. So that in that story did you read in either the News, Mirror, or any other newspaper, that Rosen was a truckman? Did you? A. I don't remember.

Q. You don't recall that? A. No.

Q. You don't recall reading in the newspaper that Sunday with respect to the name of Rosen as to the alleged motive of his killing? You don't remember that? A. I don't think so, no.

6906

Q. Weren't the papers full of the story? A. They were full of the murder.

Q. Yes? A. Yes.

Q. And the alleged reason for the murder? A. I don't remember about the reason in the papers.

Q. And who it was? A. Who what was?

Q. Who it was that was killed. A. Rosen.

Q. Isn't that so? You knew that? A. Yes.

Q. Something occurred in your mind of the similarity of names? A. Yes.

Q. Did it occur to your mind that the name

Albert Tannenbaum—For People—Cross

6907

Rosen mentioned the day before was the same person mentioned in the newspaper? A. It occurred to me it might be.

Q. You guessed at it? A. Yes.

Q. Well, in reading the details, did it say that Rosen was a truckman?

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Barshay: Exception.

6908

Q. The following day did you read it? A. I think so. What do you mean now, Tuesday or Monday?

Q. Monday.

Mr. Turkus: I object to the word "it" as confusing. Read "it" in referring to the Rosen murder would be one thing; read "it" referring to something else, is another thing.

The Court: The Court assumes "it" means the Rosen murder.

6909

Mr. Turkus: I know, but when you read questions back afterwards that assumption is not worth anything. "It" is confusing on the record.

Mr. Barshay: I did not know anything was confusing to you, but all right.

Q. I mean the Rosen murder, did you read it?
A. I might have.

Q. Any other papers? A. I think so.

Q. What other papers did you read then? A.
The Journal and some other paper.

6910

Albert Tannenbaum—For People—Cross

Q. Did you read in those papers who Rosen was? A. I don't remember if it was in the papers.

Q. Did it say something about him being a member of the Trucking Union or that he was a truckman? A. I don't remember that.

Q. Or that Dewey was looking for him? A. There was something in there about Dewey.

Q. Isn't that so? A. Yes, sir.

6911

Q. So you knew, did you not, after you read the papers—you tell me whether you did or not—who Rosen was, without knowing him personally, when you finished reading all the accounts in all the press?

Mr. Turkus: Is this going to open up the newspaper articles for the jury?

The Court: Please.

Mr. Turkus: I am satisfied, if that is the purpose.

The Court: No objection?

Mr. Turkus: No objection to newspapers going in, if they want to be offered.

6912

The Court: I say there is no objection before the Court; there is nothing to rule on.

Mr. Turkus: Then I object to the form of the question.

The Court: The form of the question is indefinite.

Mr. Barshay: All right, I will reframe it; but will your Honor entertain a motion on my part, please, to instruct the District Attorney to make no such comment as he did?

The Court: Yes.

Mr. Turkus: By indirection he is trying to put in evidence—

Mr. Barshay: There he goes again.

Mr. Turkus: —a recollection and a newspaper article of five years ago.

The Court: You are so instructed. Go ahead, Counsellor. I take it you mean, Mr. Barshay, whether or not when he read it he placed Rosen as the same person who had been discussed by Rubin.

Mr. Barshay: I go further. He has already admitted that. I go further than that. But again I am forced into the position, Judge, to give myself away if I explain it.

6914

The Court: You will have the latitude, although the question is a little ambiguous, too general.

Mr. Barshay: I withdraw it.

Q. Do you recollect the contents of any of the articles you read in the newspaper with respect to the killing of this man Rosen? A. I read something about Dewey in there.

6915

Q. You recall that? A. Yes.

Q. You recall the name Rosen? A. Yes.

Q. Do you recall the address of where the killing took place? A. No, I don't.

Q. Do you recall it was East New York or Brownsville? A. You mean now?

Q. Now, do you recall now whether or not that was in the papers? A. It mentioned candy store.

Q. Yes, in East New York or Brownsville: do you recall it? A. Yes.

6916

Albert Tannenbaum—For People—Cross

Q. Now do you recall whether or not the item in any of the papers described the victim Rosen as a truckman? A. I don't remember that.

Q. Or connected with the Clothing Truckmen's Union? A. No, I don't remember that.

Q. Do you recall whether or not the papers said anything at all about this Rosen threatened to go— Withdrawn. Rather, being a witness for Dewey? A. There was something in the paper about it.

6917

Q. You do recall that? A. Yes.

Q. Did you see Rubin after that? A. I don't think so.

Q. What? A. No, I don't think so.

Q. You never saw Rubin after that Friday? A. No.

Q. What? A. I don't think so.

Q. That was the last day you saw him in your life? A. No.

Q. When did you see him again? A. I saw him this past summer.

Q. When? A. This past summer.

6918

Q. At the Half Moon Hotel? A. Yes, sir.

Q. Between the Friday that you described of this talk, did you see Rubin at all between then, 1936, and this last summer? A. I might have seen him.

Q. What? A. I might have seen him.

Q. You tell me where you might have seen him? A. I don't know where I might have seen him. I don't remember that.

Q. Will you tell me when? A. I would not tell you the exact time.

Q. Give me the approximate time, when subsequent to September 1, 1936, that you saw Rubin. A. What? In '36?

Q. Yes, after the day you saw him at Buchalter's office, when again did you see Rubin next? A. I don't remember that.

Q. Well, did you see him that year, 1936? A. I don't know. I said I might have seen him after that.

Q. Have you any recollection at all? A. No.

Q. What? A. No, I have not.

Q. Have you any recollection of seeing him in '37, the early part of '37? A. No.

Q. Have you a recollection of seeing him after October, 1937? A. No, I don't remember.

6920

Q. Have you ever seen him in the market when he was under police guard after October, 1937? A. No.

Q. Have you seen him before Buchalter was indicted for this crime in the month of May, 1940? A. May, 1940?

Q. Yes. A. No.

Q. So that your answer is that between September 11th, or the Friday of which you do not know the date, 1936, and until this summer, you can give us no recollection of ever having seen Rubin? A. I have seen him.

6921

Q. But Rubin did see you in Buchalter's office that day? A. He should have seen me.

Q. And you knew each other? A. Yes, sure.

Q. Now, in December of 1937 did you learn that something happened to Rubin? A. That what?

Q. You did not hear me, Tannenbaum? A. No, I did not hear the full question.

Q. I will reframe the question. Did you hear that something happened to Rubin in, sometime in 1937, the latter part? Yes or no. A. I heard something happened to him.

6922

Albert Tannenbaum—For People—Cross

Q. Yes. After that did you see him? A. After 1937?

Q. Yes. A. I seen him once.

Q. Where? A. I met him over in the Federal Grand Jury building in 1939.

Q. Did you talk to him? A. Yes, sir.

Q. Did you talk to him? At that time you were not under arrest, were you? A. No, sir.

Q. You mean, you gave testimony in a harboring case there, did you not? A. No.

6923

Q. In the Federal Grand Jury? A. Special Grand Jury.

Q. Was it Dewey's office or the Federal Building? A. Federal.

Q. You know that building? A. I was in it once or twice.

Q. Did you speak to Rubin then? A. Yes.

Q. You were a witness before that jury, were you not? A. I had a subpoena.

Q. Yes. You came there pursuant to the subpoena? A. Yes, sir.

Q. Came there yourself? A. Yes, sir.

6924

Q. Your movements were not restricted? A. No, sir.

Q. Where did you speak to Rubin? A. In the hallway.

Q. Who was with him? A. There was a policeman with him.

Q. What? A. There was a policeman with him.

Q. Were you prohibited from speaking to him or were you allowed to speak to him? A. No, I just said, "Hello, how are you feeling?" He walked over to me.

Q. That is all? A. That is all.

Q. Nothing was mentioned about the occurrence of September, 1936, when you were in the same room with Buchalter, at the conference, at the few words you had with Rubin in the Federal hall? A. No, sir.

Q. Not a word? A. No, sir.

Q. No cops detained you? A. At that time?

Q. Yes. A. No.

Q. You were allowed to walk away? A. Yes, sir.

Q. You were around New York? A. Yes, sir.

6926

Q. Lived with your wife and family? A. Yes, sir.

Q. Nobody told you to run away? A. No, sir.

Q. You were not questioned by the police? A. No, sir.

Q. When did you go to Florida? A. When?

Q. Yes, after that. A. January of 1940.

Q. Under your own name? A. Yes, sir.

Q. Openly? A. Yes, sir.

Q. Lived openly? A. Yes, sir.

Q. Nobody questioned you? A. No, sir.

Q. So that from December, 1937, until you were picked up in this case— I withdraw the question. —until you were arrested in March or April of 1940, no person had questioned you about the Rosen case?

6927

Mr. Turkus: March was the date.

Q. March, 1940. A. From when?

Q. Put it this way: Up to March, 1940, when you were arrested in Brooklyn, you had not been questioned about the Rosen case? A. No, sir.

Q. Not even after you saw Rubin in the Federal Building?

6928

Albert Tannenbaum—For People—Cross

Mr. Turkus: Objected to as already answered. It has been answered twice.

The Court: That is what he said.

Q. You read in the papers of the arrest of Abe Reles when you were in Florida? A. Yes, sir.

Q. You did not run away? A. No.

6929

Q. At that time you already knew that Buchalter surrendered in August of 1939 to Edgar Hoover, did you not? A. Yes, sir.

Q. You knew he was in prison, did you? A. Yes, sir.

Q. You knew he had been convicted in the Federal Court? A. Yes, sir.

Q. You knew he had already been tried in the flour case in General Sessions in New York, did you? A. Yes, sir.

Q. You knew he had already been sentenced? A. I don't know if he was sentenced yet.

Q. Did you read about it? A. I don't remember.

6930

Q. All this time you say you were getting your pay? A. Yes, sir.

Q. \$125 a week? A. \$100 a week.

Q. While Buchalter was in prison? A. Yes, sir.

Q. Living in Florida? A. Yes, sir.

Q. Not working? A. No, sir.

Q. How long did you stay in Florida before you came back in 1940? A. About two and a half months, two months, something like that.

Q. When you came back from Florida, you lived in Brooklyn with your wife and family?

A. When I came back from Florida?

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6931

Q. Yes. A. I was arrested when I came back from Florida.

Q. But before your arrest, you lived in Brooklyn? A. Before I went to Florida?

Q. No, before your arrest in 1940, when you came from Florida, you lived in Brooklyn, didn't you? A. 1940?

Q. Yes. A. When I came from Florida?

Q. Yes. A. I was arrested.

Q. The same day? A. Two days later.

Q. That day you did go back to your home, didn't you? A. No, sir.

6932

Q. Where did you go? A. Went to somebody's house in Brighton Beach.

Q. With your wife and family? A. No, sir.

Q. Yourself? A. I came up alone.

Q. You rode up from Florida? A. By train.

Q. In the train, is that so? A. Yes.

Q. The last day you left Florida you were still under your own name? A. Yes, sir.

Q. You saw lots of people in Florida whom you knew in Brooklyn, did you not? A. That I knew in Brooklyn?

Q. Yes, in Florida then you saw lots of people whom you knew from Brooklyn? A. Yes.

6933

Q. Can you give me the address where you lived in Florida then? A. Meridian Avenue.

Q. Under your own name? A. Yes, sir.

The Court: Near where?

The Witness: 1427.

Q. When did your wife and child leave Florida? A. Oh, about ten days to two weeks after I came back.

Q. So you left them there? A. Yes, sir.

6934

Albert Tannenbaum—For People—Cross

Q. In Florida, during that period, you went out nights, saw people? A. Yes.

Q. Undisguised? You did not disguise yourself? A. No. The time I was in Florida.

Q. You met some New York City policemen, didn't you, in Florida—I don't mean socially; you bunked into them accidentally? A. I don't remember.

Q. You don't remember any at all? A. I don't know many policemen.

6935

Q. Did you know there were New York City policemen assigned to Florida during the winter season? A. No.

Q. Did you see any of them around the gambling houses where you worked? A. (No answer.)

Q. At any rate, you were not running away from them? A. No.

Q. When you came back to New York, can you tell me the exact date when you were placed under arrest? A. No, I could not tell you the exact date.

6936

Q. You don't remember? Do you know the day of the week? A. I think it was a Saturday.

Q. Do you know the early part of March or the latter part of March? A. March.

Q. You do not know which part? A. I think it was the latter part of March.

Q. Do you know whether it was day time or night time? A. When I was arrested?

Q. Yes. A. Night time.

Q. Were you told what you were arrested for? A. Not when I was arrested.

Q. Did you ask what they were charging you with? A. I asked the detective.

Albert Tannenbaum—For People—Cross

6937

Q. What did he say? A. He did not answer me.

Q. You were taken where? A. I was taken down to Greenwich Street, New York.

Q. Greenwich Street, New York? A. Yes, sir.

Q. Were you booked? A. I don't know.

Q. Were you questioned? A. Not there.

Q. Do you know who arrested you, wherever you were arrested in March of 1940? A. Yes, sir.

Q. Who? A. Detective Belsky.

6938

Q. And who else? A. I don't know the other fellow's name.

Q. He took you directly to Greenwich Street station in Manhattan? A. Yes, sir.

Q. There were you told by anyone the reason for your arrest? A. No, sir.

Q. Did you find out that night the reason for your arrest? A. Did I what?

Q. Did you find out that night the reason for your arrest? A. No, sir.

Q. How long were you kept at the Greenwich Street station house? A. A few hours.

6939

Q. During that time were you questioned about the Rosen case? A. No, sir.

Q. Were you booked at that station house? A. I don't know where I was booked.

Q. You know what it means to book a man? A. Fingerprint him and take his picture.

Q. Yes, right in front of the lieutenant's desk. A. No, not in Greenwich Street.

The Court: Make the blotter entries.

The Witness: Not in Greenwich Street, I don't think.

6940

Albert Tannenbaum—For People—Cross

Q. Did anyone from the Brooklyn District Attorney's office question you at the Greenwich Street station house? A. No, sir.

Q. Where were you taken from the Greenwich Street station house? A. Taken to Coney Island Court.

Q. Coney Island Court? A. Yes, sir.

Q. You mean the next morning? A. Yes, sir.

Q. Where did you spend the night? A. I think it was in headquarters.

6941

Q. Manhattan? A. I think so.

Q. In other words, were you taken from Greenwich Street to Police Headquarters in Manhattan? A. Coney Island.

Q. Which headquarters do you refer to that you spent the night in? A. I think it was Manhattan headquarters.

Q. 240 Centre Street? A. Yes.

Q. Is that where you slept? A. I think so.

Q. Were you questioned there during the night by anyone from any office with respect to the Rosen case? A. No, sir.

6942

Q. In the morning you were taken to Coney Island Court, is that so? A. Yes. The first night I was arrested I was all night in Greenwich Street.

Q. That is what I am asking you. A. Yes.

Q. During that night, were you questioned about the Rosen case? A. No, sir.

Q. Were you charged with any participation in the Rosen case? A. No, sir.

Q. Did you see anyone from Judge O'Dwyer's office at the Greenwich Street station during that night? A. No, sir.

Q. Did you see anyone from Inspector Mc-

Dermott's office during that night whom you knew? A. No, sir.

Q. Did you see Inspector McDermott? A. I don't know Inspector McDermott.

Q. In the morning you were taken to Coney Island and you were charged with what? A. Vagrancy.

Q. You were arraigned before the magistrate? A. Yes, sir.

Q. Were you let out on bail? A. No, sir.

Q. Were you in jail from the day of your arrest until you were discharged in the Magistrates' Court for vagrancy? A. Was I in jail?

6944

Q. Yes. A. Yes.

Q. Which jail? A. I was in custody.

Q. What? A. I was in custody.

Q. Where were you in custody during those days? A. I was in Coney Island Court a while. I was in Snyder Avenue.

Q. For another while? A. Yes.

Q. Let us see. Were you arrested on March 23, 1940, about 11 p.m.? A. At night.

Q. Yes. A. It was about that time.

6945

Q. You did not get out on bail on the 23rd, did you? A. No, sir.

Q. You did not get out on bail on the 24th, did you? A. No.

Q. You did not get out on bail on the 25th, did you? A. No, sir.

Q. And during those days, Tannenbaum, were you questioned about the Rosen case? A. No, sir.

Q. By no one? A. No, sir.

Q. During those days had you seen anyone from Judge O'Dwyer's office? A. Yes, sir.

6946

Albert Tannenbaum—For People—Cross

Q. Whom did you see? A. I saw Mr. Turkus. I saw Mr. Heffernan.

Q. Mr. who? A. Heffernan.

Q. Edward Heffernan? A. Yes.

Q. Anyone else? A. A few people.

Q. How soon after your arrest on March 23rd did you first see Mr. Turkus? A. A day or two after that. I think it was two days after that.

Q. Two days? A. I think so.

6947

Q. Where? A. At the District Attorney's office.

Q. Was it before you were arraigned in the Magistrates' Court for vagrancy? A. No, it was after.

Q. I am trying to find out, between March 23rd when you were arrested and March 26th, had you seen anyone from the District Attorney's office? A. March 23rd to March 26th?

Q. Yes. A. Two days after, I think it was two days after I was arrested, I saw Mr. Turkus.

6948

Q. Do you know when you were dismissed in the Magistrates' Court for the vagrancy charge? A. I think it was the day before they took me up to Sullivan County.

Q. Was it March 26th? A. I don't know the date.

Q. During the time that you were here in custody, in Brooklyn, until the time you left the Borough of Brooklyn to go in custody to Sullivan County, had you been questioned about the Rosen case? A. No.

Q. Not a word? A. No.

Q. And in those days you were questioned by Mr. Turkus and by Mr. Heffernan? A. Yes, sir.

Q. Anyone else? A. No, that's all.

Albert Tannenbaum—For People—Cross

6949

Q. Captain Bals? A. No.

Q. Any other detective? A. No.

Q. Was a stenographer present? A. Yes, there was.

Q. Were any of the questions about the Rosen case? A. No, sir.

Q. Was any question asked of you whether or not you had been in the office with Rubin and Buchalter on Friday, in September of 1936? A. No, sir.

Q. Not one question? But you were questioned about other things? A. Yes.

6950

Q. And you refused to answer? A. That is right.

Q. From the Magistrates' Court in Coney Island, were you taken any place? A. Yes.

Q. Where? A. To the District Attorney's office.

Q. Who took you? A. A couple of detectives.

Q. Who? A. Some detectives.

Q. Do you know their names? A. No, I don't.

Q. In the District Attorney's office were you again questioned by any assistant? A. Well, that day I was questioned.

6951

Q. Yes, by any assistant? A. When I was discharged from Coney Island Avenue Court, then I went over to the District Attorney's office.

Q. You were questioned at the District Attorney's office? A. Yes.

Q. But not about the Rosen case? A. No.

Q. And not about the meeting in Buchalter's office of yourself—the accidental meeting of yourself, Rubin and Buchalter? A. No.

Mr. Turkus: I object to the form of

6952

Albert Tannenbaum—For People—Cross

the question, carrying with it an implication.

The Court: You mean the word "accidental"?

Mr. Turkus: Yes.

Mr. Barshay: All right, I will leave it out.

6953

Q. You were not asked any question about your seeing Rubin and Buchalter on Friday in September, 1936? A. No.

Q. At the Raleigh Clothes? As a matter of fact not one time was the Rosen case mentioned to you— A. No.

Q. During that questioning? You maintained your silence and refused to answer on the ground it may tend to degrade, or something like that; right? A. Yes.

Mr. Turkus: Let us have the "something like that" understood.

Mr. Barshay: Let him tell us.

6954

Mr. Turkus: Yes.

Q. You tell us, what grounds did you give? A. Me?

Q. Yes. A. Constitutional rights.

Q. You asserted them and they were respected; right? A. Yes.

Q. Where were you taken from the District Attorney's office after you asserted your constitutional rights? A. I was taken to headquarters.

Q. Where? A. In New York.

Q. By whom? A. I don't know; a couple of detectives.

Albert Tannenbaum—For People—Cross

6955

Q. From where? A. From the District Attorney's office.

Q. Brooklyn? A. Yes.

Q. Do you know their names? A. No.

Q. On the way over to headquarters, Tannenbaum, were you questioned about the Rosen case?

A. No, sir.

Q. Whom did you see at headquarters? A. I was locked in a cell.

Q. What? A. They locked me in a cell.

Q. How long were you kept there? A. Over night.

6956

Q. Were you questioned over night by anyone? A. No.

Q. Where were you taken then? A. The following day?

Q. Yes. A. Back to the District Attorney's office.

Q. Brooklyn? A. Yes.

Q. Whom were you questioned by then? A. Mr. Turkus.

Q. Anyone else? A. No, that's all.

Q. How long were you questioned? A. A few hours.

6957

Q. Was a stenographer present? A. I don't think so. A few other people in the room but I don't know if there was a stenographer there.

Q. You know what a stenographer is, of course, and you knew then? A. Yes.

Q. Did you see anyone taking notes? A. No.

Q. Were you questioned about the Rosen case? A. No.

Q. Not a word? Isn't that so? A. Yes.

Q. Were you questioned about your presence in 1936 at the Raleigh Clothes, with Rubin and Buchalter? A. No.

6958

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Q. Did you still assert your constitutional rights? A. Yes, sir.

Q. And again they were respected? A. Again what?

Q. Again they were respected? A. Yes.

Q. After the District Attorney's office, where did you go? A. Sullivan County.

Q. Who took you? A. A few State troopers.

Q. Do you know their names? A. One was Inspector Maynard.

6959

Q. Who else? A. Two others—three others.

Q. Was it Sergeant Quinn? A. Sergeant Quinn.

Q. Was it Trooper Driscoll? A. Trooper Driscoll.

Q. Was it Corporal Lawson of the State police? A. Yes, sir.

Q. This all took place right at Police Headquarters, didn't it, where they took you? A. No, I left from the District Attorney's office.

Q. Right from the District Attorney's office up there? A. Yes.

6960

Q. They are the men that had custody of you all the way up to Sullivan County? A. Yes, sir.

Q. Up to that minute, Tannenbaum, you had not been questioned with respect to the Rosen case? A. No sir.

The Court: These were all upstate troopers, were they?

The Witness: Yes, sir.

The Court: Is not Quinn from White Plains?

The Witness: Around Hawthorne.

Mr. Barshay: May we stop now?

Albert Tannenbaum—For People—Cross

6961

The Court: Gentlemen of the Jury,
please do not discuss the case, let nobody
talk to you about it, keep your minds open.
We will resume at 1:30.

First the witness will go.
The jury out the other door.
Defendants are remanded.

(A recess was taken to 1:30 p.m.)

6962

(AFTERNOON SESSION. TRIAL RESUMED.)

ALBERT TANNENBAUM, recalled, further
testified. as follows:

Cross examination by Mr. Barshay (continued):

Q. The last question I put to you was with
respect to your being questioned about the Rosen
case at the time you were taken to Sullivan
County? A. Yes, sir.

Q. Is that clear in your mind? A. Yes, sir.

6963

Q. You said you had not? A. That is right.

Q. Where were you taken in Sullivan County?
A. Monticello.

Q. Were you lodged in jail? A. Yes, sir.

Q. Did you engage counsel? A. I did.

Q. Were you questioned in the jail by any one
with respect to the Rosen case? A. No, sir.

Q. Were you arraigned for the Yuran murder
in Sullivan County? A. No, sir.

Q. Were you arraigned for the murder of
Ashkenaz? A. Yes, sir.

Q. Do you know the date? A. No, sir.

6964

Albert Tannenbaum—For People—Cross

Q. Have you any recollection? A. I don't remember the date.

Q. Was it April 22, 1940? A. I do not know the exact date.

Q. Was it in April? A. It might have been April.

Q. Can you give me your best recollection of the date? A. No, sir.

Q. Did you plead not guilty? A. Yes, sir.

6965

Q. Who was your lawyer at that time? A. Mr. Baker and Mr. Price.

Q. Who appeared in court for you on that day? A. Mr. Baker.

Q. Is that Mr. Ellsworth Baker? A. Yes, sir.

Mr. Barshay: Do you mind standing up to be identified? Is this the gentleman?

The Witness: Yes, sir.

Mr. Barshay: You are Mr. Ellsworth Baker, of Monticello, New York?

Person Addressed: Yes, sir.

6966

Q. Was he the only one who appeared for you in court on that day? A. Yes, sir.

Q. He had been your family lawyer? A. Yes, sir.

Q. Do you mind talking up and taking your hand away, so that I will be able to hear you—Do you know when you retained him? A. The date?

Q. Yes. A. No, sir.

Q. Do you know how soon after you reached Monticello Jail you retained him? A. About a week after I got there.

Q. Is that the same case in which you later

Albert Tannenbaum—For People—Cross

6967

testified before the Grand Jury, the Ashkenaz case, without signing a waiver? A. Yes, sir.

Q. Do you know that date? A. No.

Q. Was it after you pleaded not guilty? A. Yes.

Q. Do you know how long after? A. A few weeks after.

Q. You don't know the month? A. No, sir.

Q. You don't know the day? A. No, sir.

The Court: What is the name of that case?

6968

Mr. Barshay: Irving Ashkenaz, according to my records.

Q. Did there come a time when you had been receiving visits from your lawyer? A. Yes, sir.

Q. Up to that point, when you pleaded not guilty in the Ashkenaz case, is it a fact that no one came up to question you about the Rosen case? A. That is right.

Q. Did you sign an affidavit supporting a motion to inspect the Grand Jury minutes in the case entitled, "Supreme Court, Sullivan County, People of the State of New York against Albert Tannenbaum, Defendant," involving the Ashkenaz indictment? A. Yes, sir.

6969

Q. Do you know where you signed that affidavit? A. I do.

Q. Where? A. In the Monticello jail.

Q. Do you know who brought the affidavit to you? A. Yes, sir.

Q. Who? A. Mr. Baker.

Q. Personally? A. Yes, sir.

Q. Do you know that Mr. Baker was the

6970

Albert Tannenbaum—For People—Cross

former District Attorney of that county, did you know that? A. No, sir.

Q. Did you sign that affidavit? A. Yes, sir.

Q. Did you read that affidavit? A. I did.

Q. And after you read it, you signed it? A. Yes, sir.

Mr. Barshay: May I address the Court?

The Court: You have the affidavit?

6971

Mr. Barshay: Mr. Baker has. He is here ready to produce it. If you want the jury present, all right. I want to confront him with the affidavit.

The Court: I think a question of law should be publicly stated.

Mr. Barshay: Then can I, through the Court, ask Mr. Baker to produce the affidavit here which he brought pursuant to subpoena duces tecum served upon him?

The Court: Yes.

6972

Mr. Turkus: Was that an affidavit that was ever used in a court of record, or retained exclusively in possession of the lawyer?

Mr. Barshay: Mr. Baker knows that. Mine is hearsay. He is here.

Mr. Turkus: Mr. Baker has been asked to produce it. It has not been offered in evidence. The question of confidential communication between attorney and client is not yet presented.

The Court: Is the paper on file as a court record or has it remained in the files of a lawyer?

Mr. Barshay: I do know, but mine is

hearsay, and Mr. Baker is here. It was before a Supreme Court Judge on his desk and returned to Mr. Baker. There was a copy served on the D.A.'s office.

Mr. Turkus: What D.A.'s office?

Mr. Barshay: Mr. Deckelman's.

The Court: Is that a case in which this defendant was indicted?

Mr. Barshay: Yes, sir.

The Court: Did Mr. Baker represent this defendant in the submission of the affidavit?

6974

Mr. Barshay: Yes, your Honor.

The Court: Why did the Supreme Court hand it back instead of filing it?

Mr. Barshay: Because, by the time the motion came on to be heard, this man became a State witness, and it was no longer necessary.

The Court: Let me see the paper.

Mr. Baker: May I correct a statement in one respect? After the motion came on to be heard, but before it was decided, it was found that it was no longer necessary at that time to inspect the minutes of the Grand Jury, and it was returned to me by the Judge, and the motion held in abeyance.

6975

The Court: But the motion had already been submitted?

Mr. Baker: Had been submitted and the papers returned to me, and I have a letter of the Judge returning it to me.

The Court: But the papers had been submitted?

6976

Albert Tannenbaum—For People—Cross

Mr. Baker: The papers had been submitted to the Court, yes, sir.

The Court: And they then became the custody of the Court.

Mr. Baker: That is right.

Mr. Barshay: May I have the affidavit?

Mr. Baker: I want to address the Court in that respect. I have it here.

The Court: That affidavit was not submitted without a copy being given to the District Attorney?

6977

Mr. Baker: A copy was given to the District Attorney, with notice of motion attached.

The Court: That was part of the District Attorney's file?

Mr. Baker: That is right.

The Court: That is a public office.

Mr. Baker: Yes.

The Court: Then I direct you to show it.

(Paper handed to Mr. Barshay.)

6978

By Mr. Barshay:

Q. I show you this paper and ask you whether or not that is your signature. A. Yes, sir.

Q. That is the affidavit you signed in prison, in Monticello? A. Yes, sir.

Q. And you swore to it before Mr. Ellsworth Baker, who, according to this paper, was also a notary public? A. Yes.

Mr. Barshay: I offer it in evidence.

Mr. Turkus: At this time it is objected to.

The Court: Objection overruled.

Mr. Barshay: With the Court's permission, may I read it to the jury?

The Court: Mark it and then read it.

Mr. Turkus: May I simply state my position? The objection was that it was not asked by alleged prior inconsistent statements. I think the regular procedure would be to ask him if he had made the statement in the affidavit.

The Court: I had a different point in mind, and that was perjury, false swearing in a judicial proceeding. But, inasmuch as the affidavit was withdrawn, that nullifies that particular motion. But there is a question of doubt about it and I think the defendant is entitled to the benefit of that doubt; and certainly the affidavit goes right to the question of his credibility.

6980

(Received and marked Defendants' Exhibit 2.)

6981

Mr. Barshay: May I read this paper to the jury?

The Court: Just the affidavit, that is all the jury is interested in. Briefly, it is a notice of motion for leave to inspect the Grand Jury minutes in an indictment against this witness for the murder of this Lithuanian— What is his name?

Mr. Turkus: Irving Ashkenaz.

The Court: An inspection of the Grand Jury minutes would reveal the names of witnesses who testified against him on

6982

Albert Tannenbaum—For People—Cross

which the indictment was found, and also what they testified to. Proceed and read it.

(Mr. Barshay reads, as follows:)

“SUPREME COURT—SULLIVAN COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,

6983

against

ALBERT TANNENBAUM

Defendant.

State of New York)
County of Sullivan) ss.:

6984

“ALBERT TANNENBAUM, being duly sworn deposes and says, that he is the defendant in the above entitled proceeding; that he was indicted for the crime of murder in the first degree, alleged to have been committed September 15, 1936, at the March, 1940, term of this court.

“A copy of the indictment, as has been furnished to deponent, is attached to this affidavit and made a part hereof.

“It will be noted that the indictment indicates that there are two other defendants charged with the same crime. Deponent assumes that these defendants are not named because they are not in custody.

"It will also be noted that the names of the witnesses heard by the Grand Jury are not endorsed upon the indictment.

"Deponent is informed and believes that the witnesses, upon whose testimony the indictment was found, are witnesses who claim to be accomplices in the alleged murder and present at the time the same was committed.

"Deponent desires to say at the outset of this affidavit that he is entirely innocent of the charge and was not connected with the alleged murder, nor with any other murder, and deponent will be able to establish his innocence beyond any question upon the trial of the indictment.

6986

"Deponent is of the firm belief and opinion that there was not sufficient evidence to warrant the finding of the indictment and inasmuch as he is incarcerated in jail, without an opportunity to furnish bail because of the nature of the offense he has decided to make an application to dismiss the indictment upon the ground that there was not sufficient proof produced before the Grand Jury to warrant the finding of the same.

6987

"Deponent has never had any criminal record, he is married, has one child, lives with and supports his family. Deponent's father is connected with a restaurant at Loch Sheldrake and has been for many years, and deponent himself has resided at Loch Sheldrake for several summer seasons where he has enjoyed a good reputation.

6988

Albert Tannenbaum—For People—Cross

“Deponent does not even know the names of the other parties indicted under this indictment. He not only has no knowledge or information concerning the nature of the testimony before the Grand Jury, except what he has read, or appears in the public talk, nor does he know the names of the co-defendants.

6989

“Deponent was arraigned on said indictment on the 22nd day of April, 1940, in the Sullivan County Court and pleaded not guilty. He is informed that it is the purpose of the District Attorney to move the indictment for trial at the June Term of the County Court. The indictment was found in the Supreme Court and moved to the County Court by the District Attorney.

6990

“Deponent, therefore, asks that an order be made directing the District Attorney of Sullivan County to permit deponent, or his attorney, to inspect the minutes of the Grand Jury which found the indictment and for such other and further relief as the Court may deem proper to grant.

“No previous application has been made for this relief.

(Signed) Albert Tannenbaum.

“Sworn to before me this
3rd day of April—stricken out—1940, the
word ‘May’ written over that, and signed,
Ellsworth Baker, Notary Public.”

Q. You testified in the Workman case, with respect to the same subject matter I just questioned you about? A. Yes, sir.

Q. Did you admit signing this affidavit I just read to the jury when you were asked about it in the Workman case? A. I was not asked about it.

Q. You were not asked about it? A. Not to my recollection.

Q. Give us your best recollection. A. I don't think so.

Q. Is that your best answer? A. Yes, sir.

Q. Do you know the date you testified in the Workman case? A. No, sir.

Q. Do you know the month? A. In the spring, I think.

Q. May I refresh your recollection? A. Yes.

Q. Was it some time in June of 1931? A. June?

Q. Yes. A. Around that time.

The Court: Was that the Newark case?

Mr. Barshay: Yes.

The Court: That was tried in Common Pleas?

Mr. Barshay: Court of Oyer and Terminer.

The Court: That is Common Pleas.

Mr. Wegman: Court of Oyer and Terminer of the criminal branch of the Supreme Court.

Q. At page 392 in the case of The State of New Jersey against Charles Workman, Indictment 336, April, 1941, indictment for murder—

6994

Albert Tannenbaum—For People—Cross

I might say to the Court that this is for the murder of Dutch Schultz—am I right, Mr. Turkus?

Mr. Turkus: Yes.

The Court: One defendant?

Mr. Barshay: One defendant, to my knowledge.

The Court: Go ahead.

6995

Q. Were you asked these questions, at page 392, in that case:

“Q. Before then you were first taken to Sullivan County on the charge of Ashkenaz’ murder?” And did you make this answer: “Yes”.

A. What do you mean, “Before then”?

Q. Maybe I had better read one more question. After the testimony concerning your being taken from Brooklyn to Sullivan County, which is the preceding question— I do not want to burden the record, you were asked this question:

“Q. Before then you were first taken to Sullivan County on the charge of Ashkenaz’ murder?

6996

A. Yes.” A. Yes, sir.

Q. “Q. Is that right? A. Yes.” A. Yes.

Q. “Q. You were charged with that murder? A. Yes.” Yes.

Q. “Q. You were indicted? A. Yes, sir.”

“Q. You made an affidavit in that case in which you denied that you had anything to do with it? A. I never made an affidavit.”

Did you say that exactly as I read it, in the Workman case, in June, 1941? A. I don’t remember.

Albert Tannenbaum—For People—Cross

6997

Mr. Barshay: Am I reading correctly,
Mr. Turkus?

Mr. Turkus: Yes.

Q. "Q. Didn't you make an affidavit for your attorney, a man name Baker, who filed it in court, that you were not guilty of that crime?"

"Mr. Wakenfield: —That is the District Attorney in New Jersey—I object to that.

"The Court: I sustain the objection. What difference does it make?"

6998

"Mr. Kessler: On the question of credibility, I think."

Mr. Turkus: Mr. Kessler was Charley the Bug's lawyer?

Mr. Barshay: Yes.

(Mr. Barshay continues reading, as follows:)

"Mr. Kessler, representing the defendant, then—"On the question of credibility, I think I have a right to test his credibility of whether an oath means anything to the man.

6999

"The Court: Remote—I make no point of it from his answer.

"A. I signed a paper, I did not know what it was." A. I might have made that answer.

Q. Your answer here is, "I might have made that answer"? A. Yes, sir.

Q. "Q. (By the Court) You signed a paper and you did not know what it was? A. No, sir."

Did you make that answer that way in court?
A. If it is in there I probably made it.

7000

Albert Tannenbaum—For People—Cross

Q. It is in there, and you made it? A. Yes, sir.

Q. "Mr. Wakenfield (District Attorney): He said something to the Court. I think we ought to have on the record what he told the court.

"The Court: I am perfectly willing to put on the record what he said to me—
'He told me it was a bill of particulars.'"

7001

Do you remember that? A. Yes, sir.

Q. "Q. (By Mr. Kessler, attorney for Workman) In that paper you thought was a bill of particulars, didn't you say that: 'Deponent desires to say at the outset of this affidavit that he is entirely innocent of the charge and is not connected with the alleged murder, nor with any other murder; and deponent will be able to establish his innocence beyond any question upon the trial of the indictment.' Didn't you sign that affidavit?

7002

"Mr. Wakenfield (District Attorney) I object.

"The Court: I will permit it.

"Q. Didn't you sign that affidavit? A. I signed an affidavit, but I did not know what it was. I was told it was for a bill of particulars."

Did you say that in that case, exactly as I read it? A. If it is in there, I did.

Q. It is in there. Did you say it? A. Yes, sir.

Q. "Q. You signed the affidavit, didn't you? A. I signed it. He told me it was a paper for a bill of particulars."

Albert Tannenbaum—For People—Cross

7003

Did you say that exactly as I read it? A. If it is in there, I said it.

Q. It is in there. A. I said it.

Q. "Q. All right, so he said it was a bill of particulars, that is what you signed, was it? A. I don't know. I did not read it."

Did you make that reply as I read it? A. If it is in there, I said it.

Q. It is in there. A. I said it, then.

Q. "Q. You did not read it. After that were you taken to Sullivan County, but you were never put on trial? A. No, sir."

7004

Did you make that answer?

Mr. Turkus: At this time, may the defendants' exhibit be deemed in evidence, not only the affidavit but the notice of motion and the indictment appended?

Mr. Barshay: I have no objection.

Mr. Turkus: It is marked Defendants' Exhibit 2. It will be deemed in evidence as to everything in it, including the notice of motion and the indictment.

7005

Mr. Barshay: I am informed that the correct title of Mr. Wakenfield is not District Attorney, but Prosecutor of the Pleas.

Q. You testified here that there came a time when you had a talk with Mr. Deckelman, the District Attorney of Sullivan County, while you were in jail, in which the name of Judge O'Dwyer was mentioned? A. Yes, sir.

Q. Can you tell us the date? A. I cannot give you the date; it was either the first or second Sunday in May.

7006

Albert Tannenbaum—For People—Cross

Q. Either the first or second Sunday in May, 1940? A. Yes, sir, that is right.

Q. That is your best recollection? A. Yes, sir.

Q. Was a stenographer present? A. No, sir.

Q. During that conversation with Mr. Deckelman? A. No, sir.

Q. Are you sure about it? A. Yes, sir.

Q. Did you sign any paper for Mr. Deckelman during or after that conversation? A. No, sir.

7007

Q. Thereafter, did Judge O'Dwyer come to see you personally? A. Yes, sir.

Q. Alone? A. No, sir, with some others.

Q. Can you tell me the names of the others? A. Captain Bals came up with him.

Q. Any one else? A. Yes, sir, I think there was somebody.

Q. You think there were some others? A. Yes, sir.

Q. Do you know where they visited you? A. Yes, sir.

Q. Where? A. In the court house, the Sullivan County Court House.

7008

Q. You were taken out of the jail and taken to the court house? A. Yes, sir.

Q. And this was on a Sunday? A. Yes, sir.

Q. Were you questioned then by Judge O'Dwyer or any of his associates or assistants? A. Yes, sir. Judge O'Dwyer asked me some questions.

Q. Was a stenographer present? A. No, sir.

Q. At no time? A. No.

Q. No one took notes at all? A. No, sir.

Q. Will you tell me how long this conference took, or this questioning and answering took? A. About an hour.

Q. During that time did you sign any paper?

A. No, sir.

Q. Did you see any stenographer present at all during that hour taking any notes in that room? A. No, sir.

Q. Were you questioned during that hour about the Rosen case? A. Yes, sir, I was asked about that.

Q. And no statement in any form whatever was presented to you for signature? A. No, sir.

Q. You were asked about a lot of other things, too, weren't you? A. Yes, sir.

7010

Q. And about other things was there a statement; yes or no—either signed by you or a stenographer present? A. No, sir.

Q. When were you taken back to Brooklyn? A. About the middle of May, a little after that; I would say it was about the 17th of May, somewhere around there.

Q. Is that your best recollection? A. Yes, sir.

Q. From that court house, after Judge O'Dwyer spoke to you, where were you taken? A. Back to the Monticello jail.

Q. And you remained there? A. Yes, sir.

7011

Q. Had you been visited by anybody from Judge O'Dwyer's office after this talk with Judge O'Dwyer on the Sunday before you were taken back to Brooklyn? A. Yes, sir, I got another visit.

Q. From whom? A. Judge O'Dwyer, Mr. Turkus and Captain Bals.

Q. Was a stenographer present then when you talked about the Rosen case, if you did speak about the Rosen case the second time? A. No, sir.

7012

Albert Tannenbaum—For People—Cross

Q. Did you speak about the Rosen case the second visit? A. I spoke about a few cases.

Q. Did you speak about the Rosen case? A. Yes, sir.

Q. Was a stenographer present? A. No, sir.

Q. Did you sign any statement? A. I did not.

Q. Were there any other visits from Judge O'Dwyer's office, either by himself or through his assistants, that you received while you were waiting to return yourself to the County of Kings? A. Any visits from Judge O'Dwyer or any of his assistants?

7013

Q. After that one you just told us about? A. they came up and took me down to Brooklyn.

Q. Yes, was that May 18, 1940? A. I don't know the exact date.

Q. My question was, does that refresh your recollection? A. No, sir.

Q. Do you know the day of the week? A. Today, today is Thursday.

Q. I don't mean today, do you know the day of the week then? A. No, sir.

7014

Q. Were you placed in a hotel when you came back to Brooklyn? A. Yes, sir.

Q. In the Borough of Brooklyn? A. Yes, sir.

Q. Was it the Half Moon Hotel? A. No, sir.

Q. Was it another hotel? A. Yes.

Q. Since then, I think you testified you were not arraigned in any court on this charge? A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. When you say, "Yes, sir," do you mean you were not arraigned, but you testified before several Grand Juries? A. Yes, sir.

Q. You had been eating at the hotel? A. Yes, sir.

Albert Tannenbaum—For People—Cross

7015

Q. Did you see your wife? A. Yes, sir.

Q. Did you see your child? A. Yes, sir.

Q. Were you taken out for rides? A. Once in a while.

Q. About how many times a week? A. Once a week, at the most; sometimes not even once a week.

Q. On the average? A. On the average, once in three weeks.

Q. Did you get any money from the District Attorney's office to maintain your wife? A. No, sir.

7016

Q. Do you know of your own knowledge whether or not your wife received any money? A. No, sir.

Q. Were you transferred from that hotel to another hotel? A. Yes.

Q. Was that other hotel to which you were transferred the Half Moon Hotel? A. Yes, sir.

Q. Were you taken out to Long Island to play baseball? A. Yes, sir.

Q. During the summer? A. Yes, sir.

Q. How many times? A. Oh, maybe six or seven times.

7017

Q. Always in the custody of detectives? A. Yes, sir.

Q. Did you see Sholem Bernstein at either of the hotels? A. Yes, sir.

Q. Did you see Abie Reles at either of the hotels? A. Yes, sir.

Q. Did they go out and play baseball with you? A. Yes, sir.

Q. Was there any one else that went to play baseball with you? A. Yes, sir.

Q. Who? A. Mikey Sycoff.

Q. Anybody else? A. Yes, some detectives.

7018

Albert Tannenbaum—For People—Cross

Q. Did you eat together with Abe Reles and the others at the hotel? A. Sometimes.

Q. Did you sleep in the same room with him?

A. With Reles?

Q. Yes. A. No, sir.

Q. Did you sleep in the same room with Sholem Bernstein? A. No, sir.

Q. Or with Sycoff? A. Yes, sir.

Q. With Sycoff? A. Yes, sir.

7019

Q. Did you play cards with Reles? A. Yes, sir.

Q. Did you play cards with Bernstein? A. Yes, sir.

Q. And with Sycoff? A. Yes, sir.

Q. Did you take walks on the Boardwalk in the custody of detectives? A. No, sir.

Q. Did you see Mrs. Rosen at the hotel? A. I don't know Mrs. Rosen.

Q. Then you say you did not?

Mr. Turkus: I object. He says he does not know her.

Mr. Barshay: Question withdrawn.

7020

Q. Before yesterday, Wednesday, when did you see any one from the District Attorney's office? A. Tuesday.

Q. Where? A. Over in the District Attorney's office.

Q. May I know the name of the assistant you saw? A. Sure, Mr. Turkus.

Q. Mr. Turkus was in court; do you mean after court? A. Tuesday was Armistice Day.

Q. Before that did you see any one from the District Attorney's office? A. I saw him a few times.

Albert Tannenbaum—For People—Cross

7021

Q. You discussed your testimony, which is all right, didn't you? A. Yes, sir.

Q. You knew Berger was on the stand? A. Yes, sir, sure.

Q. You knew Ruben had already testified? A. Yes, sir.

Q. Did you learn through any source whatever the substance of Ruben's testimony? A. Just what I read in the paper.

Q. Just what you read in a paper? A. Yes, sir.

7022

Q. When did you see Reles last? A. On Tuesday.

Q. Did you play cards with him? A. No, sir.

Q. Did you have dinner with him? A. No, sir.

Q. Were you in the same room with him? A. Yes, sir.

Q. Did you speak to him? A. Yes, sir.

Q. Were detectives there? A. Yes, sir.

Q. Now, Tannenbaum, you wish to escape electrocution, don't you? A. I would like to.

(At this point the witness is excused and leaves the court room. The Court remains in session. After three minutes the witness returns and resumes the stand.)

7023

Cross examination by Mr. Talley:

Q. You know the defendant Weiss very well? A. Yes, sir.

Q. You have known him very well from 1930 or 1932? A. No, sir, I met Weiss when he came out of prison in Trenton.

Mr. Talley: I move to strike it out,

7024

Albert Tannenbaum—For People—Cross

if your Honor please, and I move for the declaration of a mistrial. The answer is not responsive.

The Court: Strike it out as not responsive. The jury is directed to reject it and not consider it. The motion for a mistrial is denied.

Mr. Talley: Exception.

Mr. Wegman: I join with Judge Talley in that motion.

7025

The Court: Motion denied.

Mr. Wegman: Exception.

The Court: Mr. Witness, do not volunteer any information. Just answer the question and nothing more.

Q. What year did you begin your acquaintance with the defendant Weiss? Keep your voice up now. A. 1934, around that time.

Q. From 1934 to 1941 you got pretty well acquainted with him? A. Yes, sir.

Q. You knew him very well? A. Yes, sir.

7026

Q. You knew him so well that, according to your testimony, in Child's Restaurant at 23rd Street, he told you all about the Rosen case, that is your testimony? A. Yes, sir.

Q. At what time of day were you discussing this in Child's Restaurant? A. Some time in the afternoon.

Q. Other people were present besides you and Weiss? A. Other customers there, but not at our table.

Q. There were a number of customers there? A. Yes, sir.

Q. You say you discussed this Rosen case in

Albert Tannenbaum—For People—Cross

7027

Child's Restaurant with other people sitting around you?

Mr. Turkus: I object. That is not what he said.

Q. You said there were a lot of people there?

Mr. Turkus: That is different.

A. Yes.

Q. You would not hesitate to testify falsely, would you? A. No, sir.

Q. Under oath? A. I would now.

Q. But prior to what you call "now", you would not hesitate to testify falsely under oath?

A. That is right.

Q. What do you call "now"? Let us have the date of your reform. A. Now I am telling the truth, now.

Q. When did you commence to tell the truth? A. In May of 1940.

Q. Since then, every time you have testified, any statement, since May, 1940, you have told the truth? A. To the best of my knowledge, yes, sir.

Q. Would you testify falsely now to save yourself from prison or the electric chair? A. No, sir.

Q. You would not? A. No, sir.

Q. In May of 1940, that was when you began to tell the truth, is that right? A. Yes, sir.

Q. In the month of May, 1939, which is about a year before you began to tell the truth, you testified in a trial right here in Brooklyn, didn't

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you, or in a trial before the Grand Jury, didn't you?

Mr. Turkus: I object to the question as confusing. If you will straighten it out, I will not object.

Mr. Talley: Question withdrawn.

Q. Didn't you testify in May, 1939, in a trial before the Federal Grand Jury?

7031

Mr. Turkus: I object. It is still confusing, "In a trial before the Federal Grand Jury", that is impossible.

Q. In a hearing before a Federal Grand Jury, in May of 1939?

Mr. Turkus: Is the question revised?

Mr. Talley: Yes, that is the question.

The Witness: May of 1939? No, sir, I did not.

7032

Q. Did you ever testify before the Federal Grand Jury? A. I did.

Q. Where? A. In New York.

Q. In what proceeding? A. The Special Grand Jury.

Q. What you call the harboring case? A. Yes, sir.

Q. Did you tell the truth before that Grand Jury? A. Are you talking about the Grand Jury in Brooklyn here or the one in New York?

Q. I am talking about the one in New York. I just asked you about the Federal Grand Jury in New York. A. That I what?

Q. Did you testify? A. Yes, sir.

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7033

Q. That was in what you call the harboring case? A. Yes, sir.

Q. Did you tell the truth before that Grand Jury? A. No, sir.

Q. You testified falsely? A. Yes, sir.

Q. And you were under oath? A. Yes, sir.

Q. Did you testify before Judge Brancato in the Nitzberg case in the Borough of Brooklyn? A. Yes, sir.

Q. You were under oath there when you gave your testimony? A. Yes, sir.

Q. Did you tell the truth there? A. I did.

Q. Didn't you testify before the Federal Grand Jury that you only knew Mendy Weiss slightly? A. Yes, sir.

Q. That was false, you say now? A. Yes, sir.

Q. That was a deliberate false statement you made to the Federal Grand Jury? A. It was.

Q. Do you remember when it was? A. September of 1939.

Q. Now, you have been at the Half Moon Hotel since when? A. About a year ago.

Q. What month did you go there, was it before the summer of 1940? A. After the summer.

Q. Was it in the winter time? A. No, sir, it was right after summer.

Q. Will you say about September? A. About the end of September.

Q. September of 1940? A. Yes, sir.

Q. This is November of 1941, you have been living there ever since? A. Yes, sir.

Q. Without any expense to you? A. No, sir.

Q. You mean by that that you have not been

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paying your bills at the Half Moon, is that what you mean? A. That is right.

Q. (The Court) You have been in custody, haven't you? A. Yes, sir.

Q. (The Court) Under an order of arrest? A. Yes, sir.

Q. Was Reles also held at the Half Moon? A. Yes, sir.

Q. Was Bernstein? A. Yes, sir.

Q. Was Berger? A. Berger? No.

7037

Q. He has never been there while you were there, in custody? A. No, sir.

Q. And Sycoff? A. Yes, sir.

Q. And Ruben? A. Ruben was there.

Q. Anybody else? A. That is all.

Q. You occupied rooms on the sixth floor, didn't you? A. Yes, sir.

Q. You told the District Attorney about the door being shackled; I think that was the term used? A. Bolted.

Mr. Turkus: I used the word "shackled" incorrectly.

7038

Q. You talked about the mirrors in the hallway? A. About what?

Q. Mirrors in the hallway? A. That is right.

Q. You were under guard constantly, weren't you? A. Yes, sir.

Q. For twenty-four hours a day? A. Yes, sir.

Q. How many policemen were guarding you at a time? A. At a time, six.

Q. How close to Reles' room was yours? A. A few feet.

Q. On Tuesday night, the night before last, you were in Reles' room? A. No.

Q. You were not? A. No, sir.

Q. How close to Reles' room was your room? A. Right across the hall.

Q. Did you see Reles Tuesday night? A. Yes, sir, I did.

Q. How late Tuesday night were you in his company? A. I saw him about eleven o'clock.

Q. You were not playing cards with him that night? A. No, sir.

Q. What was he doing when you saw him last? A. His wife had just left.

Q. At eleven o'clock? A. Around that time.

Q. Was the door— Where did his wife visit him, in his room? A. Yes, sir.

Q. Was he sleeping alone? A. He had a room by himself.

Q. Did you have a room by yourself? A. No, sir.

Q. Who was sleeping in your room? A. Sycoff.

Q. How long had Sycoff been your room mate? A. A few months.

Q. Were there policemen outside of Reles' door? A. Yes, sir.

Q. All of the time? A. Well, if he was not in his room.

Q. (The Court) When you were in there playing cards on Tuesday night? A. I was not playing cards.

Mr. Turkus: That is not his testimony.
The Court: Then I misunderstood. I

7042

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thought he related that on Tuesday night after the wife left they had a card game.

Mr. Turkus: He did not say that.

Q. When you slept in the Half Moon at night, were there guards there? A. When I went to sleep there were guards.

Q. Where do the guards stay? A. There is a chair there, they used to sit down.

Q. At the door? A. No, sir, inside.

7043

Q. Did the same thing apply to Reles' room?
A. Yes, sir.

Mr. Turkus: I object. This man cannot tell; he was not in the same room with him.

The Court: Objection sustained.

Q. Were the windows locked in your room?
A. Locked?

Q. Locked? A. We could open them.

Q. Were the windows open in Reles' room?

7044

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Talley: Exception.

Q. You did play cards with Reles and others, didn't you? A. At night? Are you talking about Tuesday?

Q. No, at any time? A. Yes, sir, I did.

Q. Where were the card games usually held, in his room? A. No, sir.

Q. In your room? A. No, sir.

Q. Where? A. In the living room.

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7045

Q. You had a living room, did you? A. Yes, sir.

Mr. Turkus: I object to the form of the question, "He had a living room". He had what was given to him there.

The Court: Leave out "living".

Mr. Talley: I am quoting this witness. I am sure they had quite a suite there.

The Court: He said he had a room.

7046

Q. You told us you had a living room? A. A room where they used to stay during the day.

By the Court:

Q. You mean where all gathered? A. Yes.

Q. You yourself did not have a suite? A. No, sir.

Q. You had a common room where you people would all get together at times, is that right?

A. That is right.

Q. That is the one you called the living room?

A. Yes, sir.

7047

Q. And you had ample opportunity to talk to one another, didn't you? A. That is right.

Q. And you did talk with Reles? A. Yes, sir.

Q. And with Bernstein? A. Yes, sir.

Q. And with Sycoff? A. Yes, sir.

Q. And with Rubin? A. I did not talk to Rubin.

Q. Did not talk to Rubin? A. Not up there, I didn't.

Q. Why not? A. Did not come up there.

Q. Was not he at the hotel? A. Yes, sir.

7048

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Q. Was not he on the same floor that you were? A. No, sir.

Q. When did he come to the hotel? A. I don't know.

Q. Did you never see him there? A. I saw him there, yes.

Q. But you never spoke to him? A. I did.

Q. When you say he never came up there, do you mean to the card room, the living room? A. In our place. He never came up to our place.

7049

Q. Did you ever talk with any of these others that you have named, Reles, Bernstein, Sycoff?

Mr. Turkus: He has already answered that.

Q. About this case? A. No, sir.

Q. And the subject of this case or any testimony that you were to give was never mentioned; is that right? A. Yes, sir.

7050

Q. You talked about everything else under the sun except the testimony you were to give in this case, is that correct? A. Not only this case, all cases.

Q. What? A. We never spoke about any case.

Q. You never did? A. No, sir.

Q. Not in the fourteen months that you have been down in the Half Moon Hotel? A. That is right.

Q. No case was ever mentioned between you? A. No, sir.

Q. You took out registration cards for automobile licenses, didn't you? A. I did.

Q. And you had them signed in your name by

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7051

other people, didn't you? A. What? Had them sign in my name?

Q. No. Other people signed your name to those applications; isn't that true?

Mr. Turkus: I object unless the time be fixed.

The Court: Try to fix the time if you can.

Q. Any time in the last five years in which you have taken out license to drive cars and registration of cars, did you have someone else sign your name? A. You mean my driver's license?

7052

Q. Yes.

Mr. Turkus: I object to it. That does not affect credibility in that form. It has nothing to do with the issue we are trying.

The Court: Sustained.

Mr. Talley: Exception.

Q. When you left court yesterday where did you go? A. I went over to the office.

7053

Q. To the District Attorney's office? A. Yes, sir.

Q. And were you interrogated there about your testimony in this case? A. No, sir.

Q. What were you interrogated about? A. About a different matter.

Q. What matter?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Talley: Exception.

Q. Why not?

7054

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Mr. Turkus: Do you want me to tell you why not?

Mr. Barshay: Please, Mr. Turkus.

Q. How long were you in the District Attorney's office after you left court yesterday afternoon? A. About a half hour.

The Court: Was that an entirely different investigation?

7055

The Witness: Yes, sir.

Q. And nothing was said to you, do you say, in the District Attorney's office about the testimony you gave yesterday? A. Nothing was said.

The Court: Was that about something that just happened?

The Witness: Yes, sir.

7056

Q. Besides testifying falsely under oath before the Federal Grand Jury in New York, in what other case did you testify falsely under oath? A. That is all.

Q. What? A. That is all.

Q. That is the only one? A. Yes, sir.

Q. And of course, this affidavit that was shown to you by Mr. Barshay, that was false, wasn't it?

Mr. Turkus: What do you mean, the wording of it, the contents?

Q. Will you take your hand away from your mouth, please? A. What do you mean, it was false?

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7057

Q. The one in Sullivan County was a false affidavit, wasn't it? A. That is right.

Mr. Talley: I have no further questions.

Mr. Rosenthal: I have no questions.

Redirect examination by Mr. Turkus:

Q. Counsel for the defendant Lepke brought out that you were arrested by Detective Belsky, do you remember that? A. Yes, sir.

7058

Q. Do you know whose squad Detective Belsky was attached to? A. Yes, sir.

Q. Whose squad? A. District Attorney Dewey's squad.

Q. And after the arrest by Detective Belsky of District Attorney Dewey's squad, you were eventually brought to Brooklyn? A. Yes, sir.

Q. Counsel for Lepke also brought out that you refused to answer all questions that were put to you by the Assistant District Attorneys, namely, Heffernan and Turkus, shortly after your arrest, on the ground of self-incrimination; is that right?

7059

Mr. Barshay: I object to it, your Honor, in view of the fact that Mr. Turkus brought that out on direct examination.

Mr. Turkus: I am going to get specifically to the Rosen matter. That is only to direct his attention to these questions.

The Court: I don't recall. Overruled.
(Pending question read.)

A. Yes, sir.

7060

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Q. Before you were questioned by Assistant District Attorneys Heffernan and Turkus, had you been given legal advice by a lawyer? A. Yes, sir.

Q. Who gave you the advice not to answer the Assistant District Attorneys on the ground of Constitutional rights and self-incrimination? A. You mean the lawyer's name?

Q. No. Was it the lawyer that gave it? A. Yes, sir.

7061

Q. So that before you were questioned by the Assistant District Attorneys, you had had the advice of counsel as to how to answer them? A. Yes, sir.

Q. When you persisted in your refusal to answer questions, you were taken up to Sullivan County on a murder charge. That you told the counsel for Lepke. Is that correct? A. Yes, sir.

Q. When you were brought up there on the murder charge, you were lodged in the Sullivan County jail where prisoners awaiting trial for murder in the first degree are usually lodged; is that correct? A. Yes, sir.

7062

Q. At that time, you told counsel for Lepke, a man by the name of Ellsworth Baker, Esq., prepared Defendants' Exhibit 2, is that right, this affidavit? A. Yes, sir.

Q. At that time were you likewise represented by another lawyer besides Mr. Ellsworth Baker of Monticello? A. Yes, sir.

Q. And were you represented as co-counsel by the same lawyer who gave you the advice not to answer the District Attorney's questions in Brooklyn?

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7063

Mr. Barshay: I object to it. It is immaterial.

The Court: Overruled.

Mr. Barshay: Exception. May I have another objection on the ground that "that time" includes a general time and he is referring specifically to the time this affidavit was signed.

The Court: Yes. Go ahead. Was it the same lawyer?

The Witness: That was my co-counsel up there, that gave me the advice?

7064

The Court: Yes.

The Witness: Yes.

Q. And the co-counsel to Ellsworth Baker was also the lawyer for Farvel Cohen, a defendant in the Rosen case?

Mr. Barshay: I object to it. There was no Rosen case at that time.

Mr. Turkus: It was in being. There was a Rosen murder September 13, 1936. There most emphatically was a Rosen case.

7065

Mr. Barshay: Just a second. May I direct your Honor's attention that at that time, referring to the time mentioned in this affidavit or prior thereto there was no such person by the name of Farvel Cohen as a defendant; consequently he had no counsel and could not have counsel.

The Court: I will take it subject to being connected.

Mr. Barshay: Exception.

The Court: But if it is not connected,

7066

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there is no harm done because Farvel Cohen is not being tried.

(Pending question read.)

A. Yes, sir.

Q. In other words, Farvel Cohen's lawyer on the indictment for the killing of Rosen is that same lawyer who was co-counsel with Mr. Baker?

7067

Mr. Cuff: Objected to as already answered.

The Court: He has already answered it. Sustained.

Q. And has that lawyer been sitting in court now while you were on the stand, listening to the testimony?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

7068

Q. The co-counsel I am talking of? A. I don't see him.

Q. Look over in the jury box. A. That is Mr. Price (indicating Saul Price).

Q. I did not ask you for the name. The name is on the record. Do you know the difference legally between a motion to inspect the Grand Jury minutes which find a murder indictment and a bill of particulars supplied by the District Attorney?

Mr. Barshay. I object to it. It is entirely immaterial.

The Court: He does not have to know.

Mr. Turkus: Didn't you hear, your Honor, that he asked him questions that were put to him in the Bug Workman case in Jersey about a bill of particulars?

The Court: You can ask him if he read it.

Mr. Turkus: I wish to direct your Honor's attention to this—

The Court: That is as far as you can go.

Mr. Turkus: This witness was asked whether or not he testified in the Charlie Bug Workman case for the killing of Dutch Shultz in reference to the bill of particulars.

7070

Mr. Barshay: Your Honor, that is a misstatement.

The Court: You do not have to argue this and there is no use in splitting fine hairs on small points considering the large points that have been admitted, but he has stated that he swore in the Workman case that he made the affidavit, not knowing what it was. The furthest you can go is to ask him whether or not he read or had the affidavit read to him before he signed it, thereby knowing its contents.

7071

Mr. Turkus: What I want to elicit from the witness—

The Court: Does it get you anywhere or does it only open a new jam? The man has admitted murders; he has admitted perjuries.

Mr. Turkus: I will go beyond that.

The Court: He says he would not hesitate ordinarily to commit perjury but he

7072

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claims that since about a year ago this last spring he has been telling the truth. Now it is for the jury to say whether or not, in spite of his bad credibility, he is nevertheless telling the truth now.

Mr. Turkus: I won't pursue it.

7073

Q. At any rate, at the time you entered the plea of not guilty and signed Defendants' Exhibit 2, you were then a defendant resisting conviction on the indictment therein alleged, namely, the killing of one Irving Ashkenas, is that right?
A. Yes.

The Court: You were then fighting to save your own life, is that it?

The Witness: Yes, sir.

Q. You also said on your cross-examination by counsel for Mendy Weiss, that after May, 1940, you had told the truth in all matters in which you had testified? A. Yes, sir.

7074

Q. Was that after your conversation with Judge O'Dwyer? A. Yes, sir.

Q. Just answer this question yes or no: Did Judge O'Dwyer say to you what would occur if you testified falsely?

Mr. Barshay: I object to it. It is not proper redirect. We never brought that out.

Mr. Turkus: Yes, Judge Talley did. He brought out that since May, 1940, that was the period of transition when he decided to tell the truth. Let the jury understand how the transition came about.

The Court: Put it in clearer language—alleged change of front.

Mr. Turkus: Yes, put it that way.

The Court: Overruled.

Mr. Barshay: Exception. I object to what Judge O'Dwyer told him.

The Court: He was not asked what Judge O'Dwyer told him, but whether he told him what would happen. It calls for yes or no.

Mr. Barshay: I may have heard wrongly, but I thought Mr. Turkus asked the question in that way.

7076

Mr. Turkus: Will you read the question?

(Pending question read.)

The Court: Yes or no.

The Witness: Yes, sir.

Mr. Barshay: Exception. I move to strike out the answer.

The Court: Denied.

Q. Can you recall when Judge O'Dwyer spoke to you and said that he kept his fingers like that (indicating two fingers held closely together)?

7077

Mr. Barshay: A half an inch apart.

Mr. Turkus: Even less than that.

Mr. Barshay: I object to it. It is not binding on the defendants, what Judge O'Dwyer told this man.

The Court: Sustained.

Q. At any rate, has it been since that talk with Judge O'Dwyer that you have told the truth as you have stated to Mr. Talley?

7078

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Mr. Barshay: I object to it. That is a conclusion. That is for the jury to decide.

The Court: He can state when that talk occurred.

Q. Yes, when did that talk occur? A. In May of 1940.

7079

Q. It was brought out by counsel for the defendant Lepke that you went to California in an aeroplane since you have been in the custody of the New York Police Department, that is, since May, 1940. Was that trip with police officers in connection with your testimony before a Grand Jury in Southern California? A. Yes, sir.

Q. It was also brought out by counsel for defendant Lepke that you secured a Social Security card? A. Yes, sir.

Q. On the basis of working at some D. R. Clothing Company of Passaic, New Jersey? A. Yes, sir.

7080

Q. And as a matter of fact, you were not working for that company at all? A. No, sir.

Q. When did you get that Social Security card? A. I think it was 1938.

Q. Was that at a time when you were on the payroll of the defendant Lepke?

Mr. Barshay: I object to it, sir. The defendant Lepke—I will just confine myself to the objection as I made it.

The Court: Overruled.

Mr. Barshay: Exception.

(Pending question read.)

A. Yes, sir.

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7081

Q. Did you walk over to the agency of the United States Government and secure a Social Security card exclusively upon your representation that you were working for the D. R. Clothing of Passaic, New Jersey?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. The owner of the shop gave me the Social Security card.

7082

Q. The owner of the shop gave it to you? A. Yes, sir.

Q. Who is the owner of the shop? A. Dave Ricefield.

Q. Was that for the purpose of showing allegedly legitimate employment if you were arrested?

Mr. Barshay: I object to it. It is not binding on the defendant Buchalter, whom this witness at that time said he had not seen since August of 1937.

7083

The Court: Overruled.

Mr. Barshay: Exception.

(Pending question read.)

A. Yes.

Mr. Climenko: If your Honor please, may we add the further objection as to impropriety of form as to that question?

The Court: Obviously he could not get any compensation. His motive may be

7084

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disclosed if it was to frame up an alibi in case he got in any kind of trouble.

Mr. Turkus: That is all I am asking about.

The Court: That would explain his motive, but it would not connect him with any defendant.

Mr. Turkus: I don't say that it does. I just wanted to show the purpose of getting that type of Social Security card in so far as he was concerned.

7085

Q. You also told counsel for defendant Lepke, when he asked you about gambling houses that you were sent down to work there? A. Yes, sir.

Q. Does that refer to the two gambling houses in Florida and the one gambling house in Saratoga? A. Yes, sir.

Mr. Barshay: I object to it. The purpose I asked it, your Honor, was for the purpose of attacking his credibility. That does not excuse him.

7086

Mr. Turkus: I submit the door was opened.

The Court: Overruled.

Mr. Barshay: Exception.

The Witness: Who sent me?

Q. Yes, you said you were sent down there to work. A. Yes. The first job Lepke sent me down.

Q. Yes, what about the second? A. Second one Moey sent me down.

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7087

Mr. Barshay: I object to that and move to strike it out.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Who is that? A. Moey Dimples.

Q. Was that Dimples Wolinsky? A. Yes.

Q. Was he an employee of the defendant Lepke?

Mr. Barshay: I object to it, sir. That is a conclusion.

7088

The Court: Sustained.

Q. How about the one in Saratoga? A. Moey sent me up there too.

Q. That is referring to Dimples Wolinsky?
A. Yes, sir.

Mr. Barshay: Same objection. I move to strike out the answer.

The Court: Overruled. Denied.

Mr. Barshay: Exception.

7089

Q. Counsel for defendant Lepke also spoke to you about a police vigilance of the defendant Lepke. Do you remember those questions? A. Yes, sir.

Q. Did you say to him in substance that it was easy to sneak away from them? A. Yes, sir.

Q. Did you say in substance that there were meetings with the defendant Lepke in the subway and street?

Mr. Barshay: I object to it. That is

7090

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not proper redirect. That is merely repetition.

The Court: It is repetition. Sustained.

Q. You were asked by counsel for defendant Mendy Weiss if you saw Rubin at the Half Moon Hotel. Do you remember that? A. Yes, sir.

7091

Q. Did you ever see Rubin in the Half Moon Hotel in that suite of rooms which you testified were barricaded with a peep hole and with the mirrors outside? A. No, sir.

Q. On any occasion that you spoke to Rubin, did you say to him more than "Hello," that's all, as you responded to the question? A. That's all I said to him.

Q. Were you ever permitted to discuss facts of any case with any witness?

Mr. Talley: I object to that, if your Honor pleases. What they were permitted to do and what they did are two entirely different things.

7092

The Court: Overruled.

Mr. Talley: Exception.

A. No, we were not permitted.

Q. And did you ever talk about any case with any other prospective witnesses? A. No, sir.

Q. Since your incarceration and custody with the New York City Police Department, I mean. A. Yes, sir.

Q. You were asked by counsel for Mendy Weiss about being a good friend of Mendy Weiss. Do you remember that? A. Yes, sir.

Q. Were you as good friend in September,

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7093

1939, when you testified before the Federal Grand Jury? A. Yes, sir.

Q. That was also brought out by counsel for defendant Lepke. There was a time when he went away? A. When Lepke went away.

Mr. Talley: I object, if your Honor pleases, to that.

Mr. Turkus: I am leading up to something that is most important.

The Court: All right, take it on that basis only. Overruled. 7094

Mr. Talley: Exception.

Q. And you had testified on direct examination that you were on the payroll right up to the time of your arrest. Do you recall that? A. Yes.

Q. After Lepke went away, who paid you?

Mr. Barshay: I object to it. It has already been answered on direct examination.

Mr. Turkus: This has a bearing as to September, 1939, when he was in that Federal Grand Jury. 7095

Mr. Talley: I object, if your Honor pleases, on the ground it is incompetent, irrelevant, immaterial.

Mr. Turkus: Mr. Talley brought out that he lied to a Federal Grand Jury with respect to Mendy Weiss. Now we are entitled to have the jury understand all the facts attendant upon that circumstance.

Mr. Talley: Not entitled to anything

7096

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except the fact that he swore falsely before a Grand Jury in New York County that he did not know Mendy Weiss except slightly.

The Court: Overruled.

Mr. Talley: Exception.

(Pending question read.)

A. Mendy Weiss.

7097

Q. And was Mendy Weiss paying you in September, 1939? A. Yes.

Mr. Talley: Objected to as incompetent, irrelevant, immaterial.

The Court: Overruled.

Mr. Talley: Exception.

Q. And were you getting paid through Mendy Weiss at the time when you were testifying before the Federal Grand Jury in September, 1939, in the matter which Mr. Talley referred to as the harboring case?

7098

Mr. Barshay: I object to the question because it contains the words, "through Mendy Weiss," as an implication for which there is no basis in the record.

Mr. Talley: I object to it on the ground it is incompetent, irrelevant, and immaterial.

The Court: The word "through" is objectionable.

Q. Was the money actually being handed to you by Mendy Weiss at the time in September, 1939, when you were testifying in the Federal

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7099

Grand Jury in the matter which Mr. Talley referred to in questioning you as the harboring case?

Mr. Talley: Same objection.

The Court: Overruled.

Mr. Talley: That would not justify perjury, even if it were true.

The Court: Overruled.

Mr. Talley: Exception.

(Pending question read.)

7100

A. Yes.

Q. Just answer this question yes or no: Had you spoken to anyone with reference to the testimony that you were going to give in the Federal Grand Jury before you gave it? A. I did.

Mr. Barshay: I object to it, incompetent.

The Court: Overruled.

Mr. Talley: Same objection.

The Court: Overruled.

Defense Counsel: Exception.

7101

Q. Did you receive any instructions from Lepke as to the payroll, as to who was to pay you, before he went away?

Mr. Barshay: I object to it. It is repetitious.

Mr. Turkus: I am referring to the future, as to who would pay him thereafter.

Mr. Talley: I object to it.

Mr. Barshay: Your Honor, he has a-

7102

Alberi Tannenbaum—For People—Recross

ready answered that on direct examination.

Mr. Turkus: I have no recollection of that.

The Court: I have none at this moment. Overruled.

Defense Counsel: Exception.

A. Did Lepke tell me anything?

7103

Q. Yes, before Lepke went away, did you receive any instructions from Lepke as to who would pay you thereafter? A. No, sir.

Recross examination by Mr. Barshay:

Q. Mr. Tannenbaum, if I misunderstood you, you let me know. At the time you were arrested by Mr. Belsky of Dewey's office and charged with vagrancy, and then questioned by Mr. Turkus, you told me on cross-examination that you were not questioned about the Rosen case. Am I correct? A. That is right.

7104

Q. So that with respect to the Rosen case you did not assert any constitutional rights. It was not even mentioned by Mr. Turkus or Judge O'Dwyer or anyone else? A. No, sir.

Q. Isn't that right? A. That is right.

Q. You said that Mr. Price, Saul Price, was associate counsel for you at that time in Sullivan County? A. Yes, sir.

Q. But at the time this affidavit was signed by you and read to you, was Mr. Saul Price present? A. No, sir.

Q. When had you seen him before that time? A. A few days before.

Q. Did he have anything to do in the execution of this document in the prison?

Mr. Turkus: I object to it. He would not know about that.

Mr. Barshay: I will reframe it so that he will know the simple language.

Q. There is no doubt he was not present when you signed it? A. Yes, sir.

Q. Only Mr. Baker was? A. That is right.

7106

Q. You said up to that time you had not been questioned by anyone with respect to the Rosen case? A. That is right.

Q. As a matter of fact, Tannenbaum, Farvel Cohen at that time was not under arrest for the Rosen case at all, was he? A. No, sir.

Q. As far as you know there was no arrest of anyone with respect to the Rosen case at that time, referring to the day you signed the affidavit? A. As far as I know, no.

Q. Isn't that a fact? A. Yes, sir.

Q. You did not want to convey to this jury the thought that Saul Price asked you to lie?

7107

Mr. Turkus: I object to it.

Q. Did you?

Mr. Turkus: Just a minute. Does he want to convey that? That was not the intent of anybody.

Mr. Barshay: I will withdraw the question as long as you did not intend that.

Mr. Turkus: I intended to show he was Farvel Cohen's lawyer.

7108

Albert Tannenbaum—For People—Recross

Q. At that time to your knowledge Mr. Price was not the attorney for Farvel Cohen with respect to the Rosen case, was he?

Mr. Turkus: I object to that. That has already been answered.

The Court: Overruled.

Q. Was he? A. As far as I know, no.

Q. He was not? A. No, sir.

7109

Mr. Barshay: That is all.

Mr. Turkus: Just one question.

By Mr. Turkus:

Q. At the time that the affidavit was signed in May of 1940, May 3rd was it, did you know where Farvel Cohen was? A. No, sir.

Mr. Turkus: That is all.

7110

Mr. Barshay: Judge, as a convenience to Mr. Baker—I want to ask him one question—would you take him out of order so that he should not have to come back?

Mr. Turkus: This is unusual to break up the State's case.

The Court: I think it would tend to confuse.

Mr. Barshay: All right, I will abide by the Court's ruling.

Mr. Turkus: May all counsel approach the Court at the bench, all counsel? Is there a ruling on that?

The Court: That goes.

Mr. Turkus: Bring in Mr. Rubin, Max Rubin.

Max Rubin—Recalled for People—Redirect

7111

MAX RUBIN, having been previously sworn, recalled as a witness in behalf of The People, testified further as follows:

Redirect examination by Mr. Turkus:

Q. Mr. Rubin, on October 1, 1937, were you walking towards your home at one time during that day?

Mr. Barshay: With respect to the defendant Buchalter, I object to it.

7112

The Court: Overruled.

Mr. Barshay: Exception.

A. Yes.

Q. Where had you come from?

Mr. Rosenthal: Judge, so that I might not interrupt this line of questioning, may I have a general objection and exception to these questions on the ground that it is in no wise bearing upon my client and is highly prejudicial in its nature. I don't want to get up at each question and make the same objection.

7113

The Court: Yes. Of course, you know the ruling is not final. The ruling is only temporary, overruling the objection.

Mr. Rosenthal: Yes, but the purpose is so that I do not interrupt the continuity of it by getting up. I preserve my objection to the end.

The Court: Correct.

Mr. Barshay: If your Honor will per-

7114

Max Rubin—Recalled for People—Redirect

mit me to do that, then I won't interfere either.

The Court: All right.

(Pending question read.)

A. From 17th Street.

Q. 17th Street and where? A. I had left the office of the Greater New York Tailors Expressmen's Association on 22 East 17th Street, on a Friday.

7115

Q. And where did you go? Take the subway? A. I took the Lexington Avenue subway from 14th Street and rode up to Gunhill Road.

Q. Gunhill Road is where? A. Mosholu Parkway is the station.

Q. At that time where were you living, Mr. Rubin? A. 245 East Gunhill Road.

Q. Did you get out at the Mosholu Parkway station? A. I did.

Q. And where did you walk? A. On the east side of Jerome Avenue, for one block, to Gunhill Road, and then I turned right, which meant I was on the south side of Gunhill Road, walking towards my home.

7116

Q. Were you alone? A. I was alone.

Q. What happened to you?

Mr. Talley: I object, if your Honor please, as incompetent, irrelevant, and immaterial.

The Court: Overruled.

Mr. Talley: No bearing upon the issue being tried before your Honor; apparently an endeavor to do something, to present evidence of something that has no bearing upon this indictment whatsoever.

Max Rubin—Recalled for People—Redirect

7117

The Court: Overruled.

Mr. Talley: Exception.

A. When I got opposite Montefiore Hospital I heard a report, a shot, and I was stunned and then I fell down.

Mr. Talley: I move to strike out that answer as indicating the purpose now of the question, on the ground that the shooting of this witness, if it happened, has no bearing whatever upon this indictment.

7118

The Court: Overruled.

Mr. Talley: And may involve testimony of a crime entirely distinct from that named in this indictment.

The Court: Overruled.

Mr. Talley: I take an exception.

Q. After you were shot, Mr. Rubin, were you taken to a hospital? A. I was.

Q. What hospital? A. Fordham.

Mr. Talley: May I have an objection to all this line of testimony?

7119

The Court: Yes.

Mr. Talley: And an exception to it.

Q. Do you know how long you were in Fordham Hospital? A. From October 1st to November 8th,—thirty-eight days, about.

Q. Get a blood transfusion? A. I did.

Q. After you came out of the hospital on November 8th, were you given a police guard?

A. Yes, at first three men.

Q. That would have been a full 24-hour guard?

7120

Max Rubin—Recalled for People—Redirect

A. One man for 24 hours and the other two men whenever I went outside, so I had three men whenever I went down on the street.

Q. How long did that 3-man guard keep up?

A. Several months, I believe.

Q. After several months, was it cut down?

A. Yes, it was.

Q. To what kind of a guard? A. 24-hour guard, one man.

Q. One man 24 hours? A. That is right.

7121

Q. How long after you were shot was it before you went back to the garment district? A. I walked through the garment district whenever I could because I was getting paid from the union and I wanted to try to maintain that relationship, if I possibly could, and so I was there until February, 1939. Whenever I was able to walk around, I went down there and sort of said, "Hello" to a few people and made myself at least as if I was appearing there, to get paid.

Q. Where did the bullet enter you, Mr. Rosen?

7122

Mr. Climenko: I object to that, if your Honor pleases.

The Court: Overruled.

Mr. Climenko: Object to this demonstration. This matter has no materiality to the issue before the Court and it can tend only to be inflammatory.

The Court: Overruled.

Mr. Climenko: Exception.

Mr. Talley: I make the same objection and call your Honor's attention to the fact this claimed shooting was more than a year after the crime named in this indictment.

Max Rubin—Recalled for People—Redirect

7123

ment, too remote, in addition to being incompetent and immaterial and irrelevant to this issue.

The Court: Overruled.

Mr. Talley: Exception.

A. The bullet entered right here in back of my head (indicating), and it came out right here, right close to my eye (indicating).

Q. It entered the back of your neck and emerged at the bridge of your nose? A. That is right.

7124

Q. In close proximity to your right eye? A. Yes; a .38 calibre revolver bullet, too.

Q. Since that bullet went from the back of your neck and came out at the vicinity of one of your eyes, at the bridge of your nose, has your neck been permanently on the side?

Mr. Talley: Objected to as immaterial.

The Court: Overruled.

Mr. Talley: Exception.

7125

A. Yes, sir.

Q. Have some of those neck muscles and nerve muscles been affected by the bullet so that your head is to one side? A. Yes, and my nerves have all been shattered.

Mr. Talley: Same objection, if your Honor pleases.

The Court: Overruled.

Mr. Talley: Exception.

Q. And have you since that time been on total

7126

Max Rubin—Recalled for People—Redirect

disability on your insurance, and receiving payments?

Mr. Talley: I object, if your Honor pleases, as being purely inflammatory and tending to have an effect upon this jury that cannot possibly be justified and should not be permitted.

The Court: Overruled.

Mr. Talley: Exception.

7127

A. Yes, I have been on disability from that time on.

Q. Receiving weekly checks or monthly checks? A. Monthly check.

Mr. Turkus: That is all.

Mr. Barshay: I move to strike out each and every bit of testimony that this witness gave on the ground it has no binding effect upon the defendant Buchalter, not connected with him in any wise whatever.

7128

The Court: Denied.

Mr. Barshay: Exception.

Mr. Talley: I join in the motion, if your Honor pleases, and take an exception.

Mr. Barshay: I now move for the withdrawal of a juror and the declaration of a mistrial on the ground that this testimony is highly prejudicial and inflammatory and does not tend to connect the defendant with the commission of this crime.

Max Rubin—Recalled for People—Redirect

7129

The Court: Judge Talley's objection is overruled. Both motions are denied.

Defense Counsel: Exception, sir.

Mr. Rosenthal: On behalf of defendant Capone I again renew the motions which were made at the time of the severance and throughout this trial and ask for the withdrawal of a juror and a severance upon the ground that this testimony is in no wise connected with the defendant Capone and is prejudicial to his rights and interests.

7130

The Court: Denied.

Mr. Rosenthal: I respectfully except.

Mr. Talley: I join in both motions, if your Honor pleases. Take an exception.

The Court: Denied.

Mr. Barshay: We all except. May I call upon your Honor now to let us know whether or not we have a right to see that statement?

The Court: I did not anticipate that this witness would be back this afternoon. I have the deposition before me now. Of course, the jury will have to be excused while the matter is discussed. I have read it about three times so as to try to comprehend it, but I have not checked it up against my notes of the testimony of the witness. However, I will excuse the jury now. We may be able to come to a conclusion on it.

7131

(To jury) Excuse you for a few minutes, gentlemen.

(The jury retired from the court-room.)

132

Max Rubin—Recalled for People—Redirect

133

The Court: The deposition now being before the Court, notations will be put against each question and answer which the Court feels the defense is entitled to see. As to some of the material in the deposition, the same is highly speculative, opinionative, and therefore incompetent, and some concerns a possible prospective witness in this case, so that it would be a matter of court policy not to let counsel see that in advance of that witness taking the stand.

The Court can state now that the witness, when the deposition was being taken, told nothing whatever about flight and hiding, this, of course, in keeping with the advice previously given by Mr. Maguire.

134

The witness also failed in any way to implicate Lepke. On the other hand, he went out of his way to give assurance that if he could, he would. The Court will not comment one way or the other as to why that may have been deemed feasible, whether true or untrue, by the witness when he gave this deposition. Counsel can figure that out without any suggestion from the Court. The witness did name two men as probably active participants in the killing, whose names are included in this indictment as probable killers. That was purely on the basis of speculation. The witness was offered immunity by Mr. McCarthy, but in another part of the deposition he expresses not wishing or not wanting immunity, in other words, apparently

rejecting the offer of immunity. I will go over these questions and answers, if you will be patient for a few minutes.

Mr. Barshay: Can I take one exception to one part of the comment your Honor made?

The Court: The jury is out of the room.

Mr. Barshay: I know that, Judge, but for the record, it is an observation which your Honor made which is not based on the testimony in this case. I would like to call your Honor's attention to it.

7136

The Court: What is that?

Mr. Barshay: That is that he failed to mention anything about flight, pursuant to the suggestion of Mr. Maguire. I do not believe, your Honor, there is anything in the record with respect to that phase.

The Court: I did not say that.

Mr. Barshay: I thought I heard you say that.

The Court: In accordance with the legal advice. Mr. Maguire, you will recollect, is supposed to have advised him and told Lepke that flight may be viewed as evidence of guilt, makes a man look guilty, and then came the alleged, somewhat trite, saying by Lepke that when witnesses are away, investigations collapse. You recall that?

7137

Mr. Barshay: Yes, Judge.

The Court: Of course, as to that, we have a motive for concealment.

Mr. Turkus: May the record indicate

7138

Max Rubin—Recalled for People—Redirect

that that statement was the one that was marked for identification by the District Attorney?

The Court: Z-16 for identification.

Mr. Turkus: Was offered in evidence by the District Attorney, the offer was rejected by the defense, and when the witness was asked whether the statement was true or false, objection was made by defense counsel.

7139

Mr. Barshay: Counsel acting as lawyers made the objection then and they would make the objection now, because that is incompetent.

The Court: It is incompetent. It could not be admitted without prejudice to the defense. There was also an admission of giving money to Rosen, but there was an attempt to cover it up and to say that it was not connected in any way with the Rosen murder but was a mere casual hand-out.

7140

The Court amends what it said first about not leaving town. He admitted leaving town, but denied it was about the Rosen matter.

This is just preliminary, because my notes are rather voluminous. I am asking of all counsel, does any counsel recall at any place this witness claims that Lepke admitted having any part in the killing of Rosen?

Mr. Barshay: No, he never claimed that.

The Court: That is agreed. To save

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7141

the trouble of having to make, through some member of the court staff, a transcript of questions and answers which the Court finds defense is entitled to see, the Court will, in view of the lateness of the hour, dictate those questions and answers, and then when counsel get a daily transcript they will have them before them and continue the cross-examination tomorrow morning. Is that agreeable?

Mr. Barshay: Very much so.

7142

Mr. Rosenthal: If that is so and there will be no other testimony, may I be excused for the afternoon?

The Court: I think you had better be here when this is read. It will take only a few minutes.

(Reading.)

"By Mr. McCarthy:"—and the date of the deposition being December 16, 1937.

"Stenographer: Caneveri.

"Book No. 26.

7143

"Q. Your name and address? A. Max Rubin, 245 East Gunhill Road, Bronx.

"Q. Now Mr. Rubin, my name is McCarthy. I am an Assistant District Attorney of Kings County. I am going to ask you some questions and at the same time I want you to know that you can expect something from us. The District Attorney of Kings County is willing to give you immunity and we will agree not to prosecute you. We want to question you about the Joseph Rosen murder. Of course, you know you were over to the Joseph Rosen store. That is before the

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Max Rubin—Recalled for People—Redirect

Grand Jury now. Even if it does involve you, we are not going to prosecute you. A. I was only over to the store once, and that was on an invitation from Louis Feinberg from the union I represent. I had a car at the time, a Buick."

Mr. Barshay: Pardon my interruption. May I ask your Honor's indulgence in excusing Mr. Rubin at this time, so that he should not hear?

7145

The Court: Oh, yes. Thank you for the suggestion.

Mr. Rubin need not be brought back today. Ten o'clock tomorrow morning.

(Continuing reading.)

7146

"Q. What color was it? A. Black. He had to meet this Sam Levine to go to Brighton or wherever they wanted to go fishing. He said at the same time that Rosen wanted to see me. I went over there just that once to see Joe Rosen. It was an afternoon, I imagine about three o'clock or so, or two o'clock. I am not sure about the time. He was in the store alone. Later on his little girl came drifting in and out, maybe two or three times. The general conversation that I had with him I don't think lasted more than half or three-quarters of an hour. He complained about the business he was in and asked me what I could do to get him out of it. I did not know what he wanted to see me for, and I said, 'Joe, I will do what I possibly can do, but you had no right to quit the job without first taking it up with me.'

"Q. Quit what job? A. He was working at that time for Larry Cooper.

Max Rubin—Recalled for People—Redirect

7147

"Q. That is a fellow from Jersey, isn't it? A. No. His brother is a detective in the Homicide Squad. I think his name is Nat, or Nathan Cooper. He has been there for years. (continuing) He jumped off that job without me knowing it. I told him at first that I could have gotten him some money because there was always somebody hanging around the union that would have paid him. He said he had heart trouble and that is why he had to leave the job. He said he wanted to go in the cleaning and dyeing business. He said, 'I want to get in that other business.' I said, 'I may be able to help you, because we have done it in three or four other cases before.' We would run an affair and put them in business. That is the small union that I represent.

7148

"Q. What union do you represent? A. The Clothing Drivers & Helpers Union, Local 240.

"Q. Are you the business agent? A. Yes, and have been for about twelve years, at 35 West 15th Street. I told him I would see what I could do for him, and that is all the conversation we had, and I did not see him from that day until I read he was shot, in the newspaper.

7149

"Q. Didn't you leave town then? A. Yes, sometime in November, but not on account of that.

"Q. Did you know Lepke and Gurrah? A. Yes, very well.

"Q. Did you ever tell Rosen to get out of town? A. No.

"Q. Did you give him any money to go away? A. No.

"Q. Did you give Mrs. Rosen any money? A. I gave Rosen plenty of money. I used to give

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him 5's or 10's or deuces as I would do for anybody else.

"Q. You don't know anything about the Rosen murder at all? A. No."

The next question and answer are debatable. I put "yes" against it and then a question mark, but determined not to reveal it because I think it is incompetent, and I am absolutely sure that counsel for defense would not use it.

7151

According to another part of the deposition I have a question mark against the question and answer next to the last, on page 5, but the trouble with it is that it states—and this must be read in connection with the rest of the answer, which is simply to state his own motive and position—it states the following, which is incompetent, clearly: "I am in a position to know whether the whole thing will be run on the up-and-up. If it will be run on the up-and-up, I will do anything I can." I decided not to let that in.

7152

Then at the bottom of page 5:

"Q. I am giving you immunity. A. I don't need immunity. I was never taken into anybody's confidence on any murder cases. That was always one thing. Where I got that other stuff from was from general conversation."

On page 8, next-to-the last question and answer:

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7153

"Q. The little girl said you threatened their father and told him to get out of town. A. I did give him some money, but he did not ask me. He wanted to go in the cleaning and dyeing business, which would have required about six or seven hundred dollars. It was a question of trying to get together."

On page 9, the lower half—in reference to context which deals with Mrs. Rosen's knowledge concerning him:

7154

"Q. Because you were in the store"—

I will read the one before that. I had "No" against it. I will mark it "Yes," because these two must be read together:

"Q. She knows a whole lot about you. You were the man, according to her. A. How could she base it on?

"Q. Because you were in the store. A. I was only there once."

7155

There is a question and answer in the middle of page 10. I don't think it is competent. There is a question mark put by me against it to qualify the notation "Yes," but I think counsel should know it.

"Q. Tell me, is there anything else you want to say? A. All you ought to do with me is to pray for a break. It will come, and if I can be of any help and if you find that my story devi-

7156

Max Rubin—Recalled for People—Redirect

ates one bit from what I told you, you can do what you want. You will find that in the long run we will get many of them. You will see more of a chap in me today than any cop in the Department today."

The rest of the questions and answers are deemed incompetent, speculative, and, to a certain extent, confidential.

7157

Mr. Barshay: I hope your Honor won't misunderstand when I read my motion or my objection and exception in the record as tending to put the Court in any spot. It is merely on the law. We may be wrong.

The Court: The Court may be right or wrong. It can only do the best it knows how.

7158

Mr. Barshay: Counsel for defendant Buchalter take an exception to the ruling that speculative statements are incompetent and not available to the defendants and also an exception to the ruling that the portion affecting a prospective witness is not available to defendants for the reason—I shall modify that, Judge. If that prospective witness, whoever he may be, is not called, then your Honor will let us see any other part of the statement which you deem advisable as competent?

The Court: I have not gone so far as to say that. So far as I can see at the present time, this was purely opinionative

Max Rubin—Recalled for People—Redirect

7159

as to personality and speculative as to possible connection.

Mr. Barshay: May I finish, Judge?

The Court: Yes.

Mr. Barshay: We also, in view of the view we have about the law, which may be right or wrong, request the opportunity of seeing the whole statement in order to exercise the right to determine, as counsel, what portions are inconsistent with the testimony of the witness and affect his credibility, for if any inconsistency exists, it is our view that we must see the whole statement in order to propound our cross-examination in the light of our understanding of the record.

7160

The Court: Of course, you understand, Counsellor, the development and present liberality of the law, allowing the defense on a criminal indictment trial to see the prosecution's preparation work, has never been liberalized one bit to the extent of allowing the prosecution to see the defense preparation work or statements. This is a one-sided liberalization. It works entirely in favor of the alleged criminal. The Court, therefore, is not justified in going any further than compelled by the authority of which it is at present cognizant, which it recognizes as being controlling upon the action of the Court in this trial. Personally, I don't agree with it. I think it is one-sided, and I agree with Judge Crane in what he has said many times, that the laws tend in all re-

7161

7162

Max Rubin—Recalled for People—Redirect

spects to favor the criminal and not The People of the State of New York.

Bring back the jury.

Mr. Barshay: If your Honor pleases may the record show all people present at the time this questioning of Rubin took place, according to the statement? Was there anybody else present in addition to Mr. McCarthy and the stenographer, and the exact time and place?

7163

The Court: Detective Giordano of the Homicide Squad, Brooklyn; Mr. Frank S. Hogan, Assistant Prosecutor, who represented Mr. Dewey.

(The jury returned to the court-room.)

The Court: Gentlemen of the jury, we will take a recess until tomorrow morning at ten o'clock, when the cross-examination of the witness now on the stand will be resumed. In the meantime you are cautioned to follow all admonitions heretofore given in relation to not talking or reading or discussing or receiving any impression regarding the case. Keep your minds open.

7164

The jury may go out of that door.

The defendants are remanded.

(Whereupon an adjournment was taken to November 14, 1941, at 10 A. M.)

Max Rubin—Recalled for People—Redirect

7165

Brooklyn, N. Y., November 14, 1941.

TRIAL RESUMED

MAX RUBIN, a witness on behalf of The People, resumed the stand and testified further as follows:

Mr. Barshay: If your Honor please, there are some things I would like to clear up with respect to the statement we spoke of yesterday, so there may not be any misunderstanding at all when your Honor makes a ruling. If I understood it clearly last night, I was to have certain rights and not have other rights. Will you excuse the jury?

7166

The Court: The Court has ruled on that.

Mr. Barshay: It is a question of interpreting some of the rulings your Honor has made.

The Court: Refer to it by page.

Mr. Barshay: Page 2266. Will I be allowed to make comment? Will I be allowed to ask the witness questions on that point? It is next to the last paragraph.

7167

The Court: Not only that, but you will be permitted to even read that part of the record to the jury. That was the purpose of the Court's stating it. You have that right. Likewise, the last paragraph, which begins at the bottom of that page and continues on the other, up to and including the first four lines on page

7168

Max Rubin—Recalled for People—Redirect

2267. Omit the speculation, but as to the offer of immunity, that may go in. Is there anything else?

Mr. Barshay: There may be some odds and ends.

The Court: You can call my attention to that.

Mr. Barshay: I ask again that you permit counsel, for the purpose of assisting him in cross-examination, to use the entire statement.

7169

The Court: The Court has ruled on that. This is repetitious.

Mr. Barshay: Because, when I read it over, I wanted to make it clear. Do you deny my motion?

The Court: Yes.

Mr. Barshay: Exception.

Mr. Turkus: Since the statement was given, that portion was given to the defense counsel in the absence of the jury—

The Court: You will have to speak louder.

7170

Mr. Turkus: I say that since that portion of the statement, Z-16 for identification, a People's exhibit, was given in the absence of the jury, I would like the jury to know that was a statement, that was not for identification.

The Court: There is nothing that the jury cannot hear. Speak louder.

Mr. Turkus: I would like— It was the Court's direction that Z-16, a statement concerning which the District Attorney questioned Rubin on direct examination,

Max Rubin—Recalled for People—Recross

7171

be marked for identification. When a question was addressed to the witness as to whether or not the contents thereof were true or false, that was prevented by the Court at that time. I would like the jury to know the circumstances.

The Court: This refers to the deposition taken by Assistant District Attorney McCarthy, who was one of the Assistants under Mr. Geoghan in an investigation that was made before Judge O'Dwyer came into office as District Attorney of this county. You, Mr. Turkus, offered it in evidence, and it was objected to and excluded, but was marked for identification. The Court has read parts of it to determine what is fair to allow counsel for the defense to see, for the purpose of further cross-examining this witness. Those parts have been revealed to counsel, and counsel have the right now, to cross-examine on those points. Is that sufficient?

7172

Mr. Barshay: That is clear.

7173

Recross-examination by Mr. Barshay:

Q. Will you try to answer these questions without volunteering anything? A. Yes, sir, but it is pretty hard as far as that paper is concerned.

Q. You will try, please. I will try to ask of you questions in a way that will give me a simple answer. A. If you ask me fairly, I will certainly answer them fairly.

Q. I don't want to quarrel with you. Will

7174

Max Rubin—Recalled for People—Recross

you please answer the questions if you can, and if not, will you tell the Judge you cannot, without volunteering? Is that all right? A. I will try.

Q. Subsequent to the occurrence that happened to you as you described it to the jury, when you came out of the hospital you were under guard by the Police Department, weren't you? A. I was.

Q. For 24 hours a day? A. That is right.

7175

Q. You had already been in Mr. Dewey's office, you said, sometime in September of 1937? A. In August.

Q. Sometime in 1937? A. Yes, sir.

Q. There did come a time when you became acquainted with Mr. Frank Hogan, then an Assistant District Attorney? A. At that time.

Q. You dealt a great deal with him? A. That is right.

Q. Mr. Frank Hogan is the same person who is now District Attorney elect in New York County? A. That is right.

7176

Q. On December 16, 1937, there is no doubt about when you were under police guard? A. That is right.

Q. Were you at the office of Mr. Hogan on that day? A. I was.

Q. Can you tell us where the address was? A. 120 Broadway— Not 120—the Woolworth Building.

Q. 233 Broadway? A. Yes, sir.

Q. That was Mr. Dewey's headquarters? A. That is right.

Q. Some of the building was rented to him? A. Yes, sir.

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7177

Q. You were there at what time of day? A. I cannot tell you that.

Q. You were there under guard, I take it. A. That is right.

Q. Did you meet Mr. McCarthy, an Assistant District Attorney then serving under Mr. Geoghan? A. I did.

Q. Mr. Hogan was in the room? A. He was.

Q. The police were in the room? A. Just the one detective that Mr. McCarthy came with, and the stenographer. The detective I had went outside.

7178

Q. Right outside of the room? A. Yes, sir.

Q. In other words, in that immediate room you were certainly not under physical fear? A. No, sir, not in that room.

Q. You had heard the name McCarthy before, hadn't you, as you say from the defendant Buchalter? A. That is right.

Q. That is the famous McCarthy whose name was mentioned by Mr. Buchalter to you when he said, "McCarthy is going around saying he will make the biggest collar," or something like that, of Lepke and Gurrah? A. That is right.

7179

Q. Were you asked questions there by Mr. McCarthy? A. I was.

Q. Was a stenographer there? A. He was.

Q. Do you know now whether his name was Caneveri? A. Yes, sir.

Q. Mr. Hogan was in the room? A. Yes, sir.

Q. And a detective? A. Yes, sir.

Q. Were you asked this question? I am going to read it just exactly as the Court gave it to you, and you answer yes or no, will you? A. Can't I elaborate?

7180

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Q. No, please. A. Wait a minute Mr. Barshay—

Q. I don't want to quarrel with you.

Mr. Barshay: May I ask that the Court just say to this witness he shall answer the question yes or no, because that is the only way I shall ask the question.

The Witness: Your Honor, there is a background to this case.

7181

The Court: I understand there is a background, but you don't have to shove it before the jury. The District Attorney is here to take care of you. At the present you will be asked questions by counsel for the defense which call for direct answers and for no volunteering. The question as to whether or not a reason may be given for any apparent inconsistency is a question of law for the Court to rule upon, but the situation will be confused if you attempt to volunteer anything in order to straighten this out.

7182

Q. Was this question asked of you: "Q. Your name and address?" and did you give this answer: "A. Max Rubin, 245 East Gunhill Road, Bronx"? A. That is right.

Q. Was this question asked you: "Q. Now, Mr. Rubin, my name is McCarthy. I am an Assistant District Attorney of Kings County. I am going to ask you some questions and at the same time I want you to know that you can expect something from us. The District Attorney

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of Kings County is willing to give you immunity and we will agree not to prosecute you. We want to question you about the Joseph Rosen murder. Of course, you know you were over to the Joseph Rosen store. That is before the Grand Jury now. Even if it does involve you, we are not going to prosecute you. A. I was only over to the store once, and that was on an invitation from Louis Feinberg from the union I represented. I had a car at the time, a Buick."

7184

Did you make that answer to that question?
A. I did.

Q. Were you asked this question: "Q. What color was it? A. Black. He had to meet this Sam Levine to go to Brighton or wherever they wanted to go fishing. He said at the same time that Rosen wanted to see me. I went over there just that once to see Joe Rosen. It was an afternoon, I imagine about three o'clock or so, or two o'clock. I am not sure about the time. He was in the store alone. Later on his little girl came drifting in and out, maybe two or three times. The general conversation that I had with him I don't think lasted more than half or three-quarters of an hour. He complained about the business he was in and asked me what I could do to get him out of it. I did not know what he wanted to see me for, and I said, 'Joe, I will do what I possibly can do, but you had no right to quit the job without first taking it up with me.'"

7185

Did you make that answer to that question as I read it? A. That is right.

7186

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Q. "Q. Quit what job? A. He was working at that time for Larry Cooper."

Did you answer that question as I read it? A. Yes, sir.

Q. "Q. That is a fellow from Jersey, isn't it? A. No. His brother is a detective in the Homicide Squad. I think his name is Nat, or Nathan Cooper. He has been there for years. (continuing) He jumped off that job without me knowing it. I told him at first that I could have gotten him some money because there was always somebody hanging around the union that would have paid him. He said he had heart trouble and that is why he had to leave the job. He said he wanted to go in the cleaning and dyeing business. He said, 'I want to get in that other business.' I said, 'I may be able to help you, because we have done it in three or four other cases before.' We would run an affair and put them in business. That is the small union I represent."

7187

Were you asked that question and did you make that answer? A. That is right.

Q. You were then speaking about a conversation you had with Joseph Rosen? A. Yes, sir.

Q. Were you asked this question: "Q. What union do you represent? A. The Clothing Drivers & Helpers Union, Local 240."

Did you answer that question in that way, as I read it? A. Yes, sir.

Q. "Q. Are you the business agent? A. Yes, and have been for about twelve years, at 35 West 15th Street. I told him I would see what I could do for him, and that is all the conversation we had, and I did not see him from that day until I read he was shot, in the newspaper."

7188

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7189

Did you answer that question just as I read it? A. I did.

Q. "Q. Didn't you leave town then? A. Yes, sometime in November, but not on account of that."

Did you answer that question as I read it? A. I did.

Q. "Q. Did you know Lepke and Gurrah? A. Yes, very well.

Did you answer that question as I read it? A. Yes, sir.

7190

Q. "Q. Did you ever tell Rosen to get out of town? A. No."

Did you answer that question the way I read it? A. Yes, sir.

Q. "Q. Did you give him any money to go away? A. No."

Did you answer that question as I read it? A. Yes, sir.

Q. "Q. Did you give Mrs. Rosen any money? A. I gave Rosen plenty of money. I used to give him 5's or 10's or deuces as I would do for anybody else."

7191

Did you answer that question as I read it? A. I did.

Q. "Q. You don't know anything about the Rosen murder at all? A. No."

Did you answer that question as I have read it? A. I did.

Q. "Q. I am giving you immunity. A. I don't need immunity. I was never taken into anybody's confidence on any murder cases. That was always one thing. Where I got that other stuff from was from general conversation."

7192

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Did you answer that question the way I read it?

A. Yes, sir.

Q. "Q. The little girl said you threatened their father and told him to get out of town. A. I did give him some money, but he did not ask me. He wanted to go in the cleaning and dyeing business, which would have required about six or seven hundred dollars. It was a question of trying to get together."

7193

Did you answer that question as I read it? A. I did.

Q. "Q. She knows a whole lot about you."—referring to Mrs. Rosen—"You were the man, according to her. A. How could she base it on?"

Were you asked that question and did you make that answer? A. Yes, sir.

Q. "Q. Because you were in the store. A. I was only there once."

Did you make that answer to that question? A. Yes, sir.

Q. Were you asked this question by Mr. McCarthy:

7194

"Q. Tell me, is there anything else you want to say? A. All you ought to do with me"—

Mr. Barshay: Am I reading it correctly, Mr. Klein?

Mr. Turkus: The record is that way. Let it go according to the record. We have no quarrel.

The Court: It shows as the stenographer transcribed it. I do not assume responsibility for errors in transcription.

Mr. Turkus: It has the word "got" instead of "ought."

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7195

The Court: Change it. There are numerous mistakes in the record of a trial, sometimes several to a page.

Mr. Barshay: That does not change the meaning of the statement.

Q. Were you asked this question by Mr. McCarthy: "Q. Tell me, is there anything else you want to say? A. All you got to do with me is to pray for a break. It will come, and if I can be of any help and if you find that my story deviates one bit from what I told you, you can do what you want. You will find that in the long run we will get many of them. You will see more of a chap in me today than any cop in the department today."

7196

Mr. Barshay: I believe the word "chap" is meant to be "cop."

Q. Did you mean "chap" or "cop"? A. I cannot remember now.

Q. I will read it just as it says: "You will see more of a chap in me today than any cop in the Department today." Did you make that answer to the question I just read? A. I did.

7197

The Court: The word "chap" was in the transcript that the Court read from, but it is obviously an error. He must have said "cop."

Mr. Turkus: May I say at this point, your Honor, in reading the statement, or the portions of it you have given to the defense counsel, you referred to this as a deposition. In order that the record may

7198

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be clear, this is simply a "Q. & A." statement taken by McCarthy on December 16, 1937. This is not signed or sworn to and not what I would call a deposition.

The Court: In the sense that it is not signed or sworn to, the term "deposition" does not apply, but "deposition" was used to typify it, because the legal meaning of "deposition" is a sworn statement in question and answer form. An affidavit is in the narrative form, purely as matter that is alleged. Go ahead.

7199

By Mr. Barshay:

Q. Is it not a fact, Mr. Rubin, that in that statement to Mr. McCarthy at Mr. Dewey's office, in the presence of Frank Hogan, you in any way— Question withdrawn.

Q. You did not implicate the defendant Buchalter, or Lepke, in any respect whatever—yes or no? A. That is true.

7200

Q. You did not implicate him? A. I did not.

Q. Is it not a fact that in that statement you, on the other hand, went out of your way to give assurance to the Assistant District Attorney then that if you could implicate Lepke you would? A. Where do you get that inference from?

Mr. Turkus: No, this is something the Court disclosed to counsel yesterday.

By the Court:

Q. Is it a fact you said you would implicate

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7201

Lepke if you could? A. I don't remember saying that. I don't think at that time I would implicate him, even if I could.

Mr. Barshay: I move to strike out the answer as not responsive. I am following the Court's instructions to the letter.

The Court: Correct. Strike it out. The District Attorney can take care of anything by way of explanation.

Mr. Barshay: I ask to have the question repeated by the stenographer.

7202

Q. (Repeated by stenographer.) A. I did.

By Mr. Barshay:

Q. There is no doubt, Mr. Rubin, that the offer of immunity made to you by the Assistant District Attorney, Mr. McCarthy, was repeated by you? Yes or no. A. I am not looking to deviate from my understanding or instructions from the Court, but I simply want to say as a layman I did not know—you can stop me if you want to—I would be pleased if you stopped—

7203

The Court: Mr. Barshay wants to know if it is not a fact you said you did not want immunity.

The Witness: Yes, sir, that is right.

Q. Is it not a fact that in that statement made to Assistant District Attorney McCarthy you did not mention to him the incident with respect to you going to Berger and telling him to go to Buchalter? A. I certainly did not.

.204

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Q. Isn't it a fact that in that statement made to Assistant District Attorney McCarthy then, that you did not tell him that Allie Tannenbaum was present in the room with respect to the conversation you and Bachalter had on September 11th?

7205

Mr. Turkus: I object, there was no conversation in that statement in which he said he had such a conversation with Lepke.

The Court: There is nothing in the statement concerning any conversation with Lepke whatever.

Mr. Barshay: Is it clear, your Honor, that the name of Tannebaum is not mentioned in that statement?

The Court: It is clear the statement is silent so far as such a conversation with Lepke is concerned.

The Court: Any other questions?

Defense Counsel: No questions.

7206

Redirect examination by Mr. Turkus:

Q. When you were on direct examination I put a question to you: Was the statement Z-16, District Attorney's exhibit for identification, true or untrue, and at that time the Court sustained objection to the question. I now renew it. Was People's Exhibit Z-16, the District Attorney's exhibit in this case for identification, true or untrue as to your answers?

Mr. Barshay: Object: that is a matter for the jury.

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7207

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Untrue.

Q. When you discussed the matter in the District Attorney's office after Judge O'Dwyer was District Attorney, was this statement, Z-16 for identification, shown to you—yes or no?

Mr. Barshay: I object to it as not binding upon this defendant.

The Court: Objection overruled.

Mr. Barshay: Exception.

7208

A. It was.

Q. Answer this question yes or no: And were you asked about that statement in the District Attorney's office?

Mr. Barshay: I object to that as incompetent, not binding on the defendants.

The Court: Objection overruled.

Mr. Barshay: Exception.

7209

A. Yes, sir.

Q. Did you make response to the District Attorney in connection with People's Exhibit Z-16 for identification?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

The Court: Answer that yes or no.

A. Yes, sir.

7210

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Q. Now, you have related to the Court and Jury that the contents of People's Exhibit Z-16 for identification are untrue.

Mr. Barshay: I object to that as repetitious.

The Court: Yes, that is what he said.

Q. Why did you give untrue answers to Mr. McCarthy on December 16, 1937, in the Rosen case?

7211

Mr. Barshay: I object. That calls for the witness's opinion and is a conclusion and self-serving declaration, and not binding in any wise upon the defendants.

The Court: This is a ticklish question of the law of evidence. The Court must use care, unusual care, in deciding it, but the Court must assume the responsibility of decision. Under the rules of evidence there are circumstances under which a witness may state the reason existing in his own mind at the time of doing a certain thing. There is no doubt about that. As applied to the evidence in this case as heretofore given by this witness, the statement concerning which he has just been cross-examined on is obviously for the purpose of impeaching his credibility as a witness in giving his testimony for the prosecution in the trial of this case. It is the view of the Court, and I think it is good law, that if a witness has given an untrue statement on some occasion and that is used as the basis of impeachment

7212

of his credibility, that in redirect the prosecution may go into the gravamen of the falsification as having a bearing on the extent to which his credibility is affected. The magnitude of the falsification varies in accordance with the temptation that produces it; varies in accordance with the temptation that produces it. There is a distinction that is properly considered between a wilful falsification as a sheer matter of dishonesty, and that which, under temptation or inducement, is tendered to serve an end—to serve a selfish purpose—an instinct of self-preservation, or an instinct, possibly, of personal safety. I think that some of counsel have read an illustration of that kind in the first book of Victor Hugo's *Les Misérables*, where Javert enter the home of the priest, after Jean Valjean, a criminal fugitive has just fled to escape arrest after having been dined at the table of the priest and of the priest's two sisters—I should say a sister. That sister enjoyed the reputation of having never told a lie, and when Javert asked the sister whether or not Jean Valjean had been there, the sister told her first lie. She said "No." I read that book while my philosophy on this subject was in its formative stage—that is a good many years ago—but the words of Victor Hugo, as recorded there, in commenting on the lie told by the priest's sister, have had a profound influence on my philosophy in determining

7216

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the extent to which a person, to my notion, is impeached in general credibility by falsification in a specific respect. Counsel may possibly have the same recollection that I have. I think this is admissible. I think the witness is entitled to state the reason why he did not tell the truth, if, in fact, he did not tell the truth and that is the view of the jury. The objection is overruled.

7217

Mr. Barshay: Your Honor, may I take exception to the Court's observation, most respectfully.

Now, I have another objection, if your Honor will hear it, a very brief one. We object to the ruling of the Court because we anticipate that the answer of this witness, if improperly received, will tend to create prejudice by reason of the statement of the mental operation of this witness. And for that reason we move for the withdrawal of a juror and the declaration of a mistrial.

7218

The Court: Objection overruled. Motion denied.

Mr. Barshay: In addition, we most respectfully move for the withdrawal of a juror by reason of the remarks of the Court, which, however intended, may well be construed by the triers of the facts to be exculpatory of the witness.

The Court: Not at all. I know nothing about the question of the truth or falsity of this witness's statement, nor have I permitted myself to form any opin-

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7219

ion. In my own mind a wall has been erected between myself and the consideration of that point because that is the function of the jury.

Mr. Barshay: Exception.

I ask your Honor, in the absence of the jury, to hear the answer of this witness to determine for yourself whether or not his answer is prejudicial and inflammatory, in order for your Honor to obviate the necessity of a subsequent declaration of a mistrial should you find that to be necessary.

7220

The Court: I think that is a fair suggestion. The jury is excused.

(The jury leaves the court-room.)

The Court: Now that the jury is out of the room, the Court will state for the edification of counsel its recollection of the quotation from *Les Miserables*. "God bless her for that lie."

Mr. Talley: Supposing some of these jurors have read *Les Miserables*. Is not the telling of that story just about the same as giving them the answer that you just quoted, which would be fatal, and nearly every one of those twelve men have read *Les Miserables*.

7221

The Court: I doubt if it has been read for the last forty years. I read it nearly fifty years ago.

Mr. Turkus: At any rate, we are try-

7222

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ing an indictment for murder, not a literary gem.

Mr. Cuff: We did not drag it in.

By Mr. Turkus:

Q. Now that the jury is out of the room, state to the Court why it was that on December 16, 1937, when Assistant District Attorney McCarthy questioned you about the Rosen case, why you made untrue answers.

7223

Mr. Barshay: I make the same objection as I made before. I ask your Honor at the same time to instruct the witness not to give any hearsay testimony.

The Court: Overruled.

Mr. Barshay: Exception. It is improper in form and improper redirect.

The Court: Objection overruled.

Mr. Barshay: Exception.

7224

A. I had just been shot in the head. I went to the Grand Jury, where anybody knew where I was. I was shot in the head. Do you mean to tell me I would give that man or any other man a statement for his office? Like hell I would—like hell I would. It was like giving it to that man (indicating defendants). And if I had fifty cops around me I would have been killed with these rifle shots two blocks away. It would be as much as death to myself and family if that office had that statement. You could not keep it secret from that man. He had an "in" there, and he knows it. And I know it, because he told it to me.

The Court: Now, gentlemen, of course it is obvious that a demonstration of this kind before the jury cannot be permitted. Mr. Witness, you are instructed that this will not be tolerated before a jury. When the jury comes back, under no circumstances must there be any such demonstration with the answer, no matter how you feel on the subject. Now, counsel, the furthest the witness can be permitted to go will be to state in a temperate manner whether or not he falsified under a feeling of fear, because of having been shot.

7226

Mr. Turkus: He has other reasons.

The Court: I have not heard that.

Mr. Turkus: I am making this suggestion: I am going to withdraw the question in that form because I understand what your Honor has reference to.

The Court: I will permit this—and I think no exception can properly be taken to it—I am going to permit a leading question to be asked in order to prevent a repetition of this demonstration. There must be assurance against that. We know what the answer is; therefore a leading question is not harmful. The witness may be asked whether or not he gave false answers.

7227

Mr. Turkus: Due to fear on account of having been shot?

The Court: Those are the words that may be asked, and the answer will have

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to be yes or no, without demonstration or emphasis.

Now, there was one other point there in the deposition which does not relate to the question of fear, and that is concealment or flight. On that point he has had advice, according to the record, of an attorney named Maguire, as to what inference of guilt could be drawn from flight. If questioned on that point he would have a right to answer.

7229

You may bring the jury back.

Mr. Turkus: Under that rule, the information that Lepke had been giving this witness as to his contact with the District Attorney's office then in Brooklyn was something that was in this man's mind, which he stated here on the record. Now, under that rule, it is not before a jury, may we have what he said?

The Court: I know what he said. I am thinking hard on that point at the present moment. I think that would be incompetent. He can state—he can be asked whether or not it was fear of a come-back from Lepke due to the fact he had been shot.

7230

Mr. Turkus: The witness has pointed out what he told, even in the Grand Jury, then he is asked to relate something about some representative in the office—

The Court: You don't want a mistrial, do you?

Mr. Turkus: No, but can't we have this reread to see if there is any objec-

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7231

tionable matter! That can be read by the stenographer.

The Court: The Court has said you may ask a leading question which calls for a simple "yes" or "no" from the witness.

Mr. Turkus: I will do it that way.

The Court: I dictated the question, which you are permitted to ask exactly as the Court dictated it, word for word. Please do not deviate from it or you may run into trouble. Do you want me to put it in writing? I will again read it to you, before the jury is called back. I will read the question you are permitted to ask: "Did you give untruthful answers to Mr. McCarthy due to fear of Lepke on your part because of the fact of you having been shot, following"—that was after he testified before the Grand Jury?

7232

Mr. Klein: Yes.

The Court: (continuing)—"following your testimony before the Dewey Grand Jury?"

7233

Mr. Turkus: I don't want to limit the redirect examination to that question. There are certain matters I want to bring out. For example, Lepke was on the loose at that time. Another thing I want to show is the forecast that Lepke made as to happenings in the Rosen investigation, that they came true—every forecast he made. It was brought out by Mr. Barshay that he was then under the protection of a bodyguard; that he was not in fear of

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any physical harm in the room of Mr. Hogan at that time, so that argument may be made to the jury about the man in that respect. I want to show that Lepke was not in custody then, that this witness had confidence in Dewey's office, and that the matters he said there—

The Court: There was no evidence he was in custody.

7235

Mr. Turkus: No, Lepke was then on the loose at that time. McCarthy might be able to give him immunity from any prosecution in the Rosen case, but he could not give him immunity from Lepke on the loose. I want to bring out the real situation here.

Mr. Barshay: I object to further comment.

The Court: How can he answer whether or not Lepke had been apprehended? How does Rubin know? How could he know?

7236

Mr. Turkus: (addressing the witness) Tell the Judge.

The Court: I am talking to you. There is nothing on the record to show he had been apprehended. Why do you have to ask this witness for hearsay evidence on that point?

Mr. Turkus: That was his mental status, that Lepke was on the loose, and that immunity could not be given to him by McCarthy, because Lepke was on the loose. Further, that he knew that whatever was said to anybody over across the

Bridge at that time would get right back to the defendant Lepke.

The Court: Now you are just going to run into a wrangle on a collateral issue concerning the manner in which another administration of the District Attorney's office was conducted, and I do not think that would look very pretty to discuss in connection with this case.

Mr. Turkus: Only his state of mind.

The Court: It would be unfair to the gentlemen who were connected with that administration and the high class and excellent public officials who were on the stand, including Mr. Geoghan himself.

Mr. Turkus: Nobody finds any fault with Mr. Geoghan.

The Court: You know how this will be sensationalized by the press. It is not fair. I will not permit it.

Mr. Barshay: I regret an opportunity has been given to the press for this, but it was instigated by Assistant District Attorney Turkus. I will keep my temper.

The Court: A fair and true report is expected by representatives of the press. The Court has shown courtesy to all of them in the court-room set-up, and in every way has enabled them to be facilitated in the handling of press comment in this case. And the Court feels confident that the members of the press will handle this in a gentlemanly manner and with due regard for propriety.

Mr. Barshay: Some of the members of

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the press left before your Honor made this comment. However, I am not going to be put in a position of defending Mr. Geoghan. He needs no defense. All the people in Judge O'Dwyer's office cannot come up to his standard, that is all I want to say about that.

I move to strike out this witness's answer that he has given to Mr. Turkus.

The Court: Motion denied.

7241

Mr. Barshay: Exception.

The Court: It cannot be stricken out without confusing the record in reference to the precautions taken as to the method by which this witness may be interrogated upon the return of the jury to the court-room.

Mr. Talley: I wish to advise your Honor that I will object to the question as dictated by your Honor for the guidance of the District Attorney, when it is put. I think I should apprise your Honor of that beforehand.

7242

The Court: I naturally expected there would be objection.

Mr. Talley: I wish to add, and I regard it as my duty as a member of this bar, that the attack upon Mr. Geoghan and his office is the most outrageous and unjustified thing I ever heard in a court-room. I can only give you my experience with that office. I found Mr. Geoghan a high-class, capable, intelligent, and able District Attorney, despite the attack made upon him by Mr. Turkus, and I think your



Honor and the gentlemen of the press who appear here should consider it as coming from a polluted, vile source, and I mean this witness, whose testimony has been heard, who cannot tell the truth either here or in any other tribunal, whether before an Assistant District Attorney or a judge of this court.

The Court: Mr. Turkus has not said anything derogatory to Mr. Geoghan. Mr. Geoghan is a close personal friend of mine. I have the highest respect and admiration for him. I have the utmost confidence in his integrity, and I feel quite sure Mr. Turkus feels the same way.

7244

Mr. Turkus: That is true, and it is unfortunate he was betrayed by somebody who was an alleged friend.

The Court: We are not going to try here the question of integrity concerning any person on that staff.

Mr. Talley: We should not allow it by an attack which emanates from a cowardly killer like this, upon a decent man like Mr. Geoghan, to go unchallenged.

7245

The Court: Do you expect this man, after what he has gone through, to be without emotion and be insulted—

Mr. Talley: He is a fakir and an actor.

The Witness: You are only the front of this whole thing; that is all you are.

The Court: The Court asks you to take your seat. This is disorderly conduct.

Mr. Talley: I will be glad to.

The Witness: He has no right to insult

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me like that. You are the front. That is all you are. You are the great big front, because you are a judge, not for what you can do—don't insult me like that. I want you to know I am 52 years old. Until I met that man I never did anything wrong, and only to do him a favor is why I got in any trouble. I never was a crook and I never was a murderer and I never had anything to do with that. You filthy swine, to call me such names. I think it is an outrage when a witness comes up here voluntarily. I am not involved in this thing. I came up voluntarily. I am not lying to save my skin. I have more guts in me than you will ever have.

7247

The Court: This unwarranted insult was done for the purpose of causing this outbreak, which is a normal reaction as observed by the Court and compels the Court to allow the witness to go out at this time for the purpose of composing himself. I know that an emotional outburst of this kind takes considerable time to recover from, and it forces the Court now, at 25 minutes after 11, to declare a recess until one o'clock.

7248

The jury will be brought back. A recess will not be declared until the jury has been brought back. There will be no more discussion. I feel the Court has been deeply humiliated.

Mr. Rosenthal: I will wait until after recess. I do not want to be accused of being dilatory, though, to make a motion.

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The Court: Please make it now.

Mr. Rosenthal: My motion is, in so far as the defendant Capone is concerned, for a mistrial, the withdrawal of a juror and the declaration of a mistrial upon the ground that his rights have been absolutely prejudiced and that he is in no wise connected with any of these matters that have been alleged or testified to, or in accordance with your Honor's proposed question that will be propounded.

7250

The Court: The motion is denied.

Mr. Rosenthal: Exception.

Mr. Barshay: Will your Honor note my objection.

The Court: The whole thing here was disgraceful and absolutely reacts upon the one who caused it.

Mr. Barshay: Will your Honor give me an exception to the entire proceeding?

The Court: It is a discredit to the party who caused it.

(The jury then returned to the room.)

7251

The Court: (addressing jury) For reasons which the Court is not permitted to state to you, it has become necessary to recess at this time until one o'clock. Please do not discuss the case not let anybody talk to you about it. Keep your minds open. You may go to dinner or lunch at 12 o'clock. Be promptly on hand, everybody at one o'clock.

The Court wants to call attention to another matter. In the reorganization of

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the court, a ceremony which is usual in opening the court session, all counsel should be in their places when the Judge enters and makes his bow. That is a courtesy owed, not only by the other members of the staff and by the jury, but by counsel. It has been repeatedly called to the attention of the Court that counsel, notwithstanding advice in the corridor to be in their places, have disregarded such advice particularly and to a large degree have sauntered into their places after the ceremony of calling the court-room to order. The Court will not be provoked into discipline but expects a gentlemanly response. The jury will now pass out. The defendants are remanded. Recess till one p. m.

(Recess taken until 1:00 P. M.)

7254

AFTERNOON SESSION—TRIAL RESUMED

The Court: Gentlemen of the jury, counsel for both sides know the answer to that question but, in order to avoid the possibility of a mistrial by reason of the framing of the answer by the witness, the Court has permitted a paraphrasing of the answer that was given by the witness in such a manner as to eliminate anything of an improper or objectionable nature and is permitting the District Attorney to put

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that question as a leading question so as to call simply for a yes or no answer.

Bring in the witness.

MAX RUBIN, resumed the stand and testified further, as follows:

By Mr. Turkus:

Q. Mr. Rubin, the District Attorney is permitted to only ask you a single question and to that single question you are permitted to make only a yes or no answer and disclose nothing else. Is that clear to you? A. That is right.

7256

Q. Listen very attentively to the question and answer it exclusively either yes or no. Did you give untruthful answers to Mr. McCarthy due to fear of Lepke on your part because of the fact of having been shot, following your testimony before the Dewey Grand Jury?

Mr. Talley: I object to the question as leading, suggestive, incompetent, irrelevant and immaterial, and not proper re-direct examination.

7257

The Court: The Court is making it leading in order to benefit you, sir. Now you object to it as leading.

Mr. Talley: Your Honor has ruled?

The Court: After what occurred this morning, I think it is in bad taste. The ruling is that the Court's view is you are doing this to provoke an outbreak to use as the basis for a motion for a mistrial. You have called for this answer. Now you have it. The objection is overruled.

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The Court will assume the responsibility for this ruling.

Mr. Talley: I take exception to your Honor's ruling.

The Court: Of course, the word "that", Mr. Turkus, is wrong.

Mr. Turkus: I tried to write it verbatim.

The Court: I did not say "that".

7259

Mr. Turkus: I thought I took your Honor down verbatim. The way I wrote it down—

The Court: Put it just as you read it. Put the question.

Q. Did you give untruthful answers to Mr. McCarthy due to fear of Lepke on your part because of the fact of having been shot, following your testimony before the Dewey Grand Jury?

Mr. Talley: We make the same objection, upon the same grounds.

7260

The Court: Overruled.

Mr. Talley: Exception.

The Court: Answer yes or no.

A. Yes.

The Court: That is all.

Mr. Barshay: Exception.